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MANITOBA PUBLIC UTILITIES BOARD

RE:

PRE-HEARING CONFERENCE
RE: APPLICATION FOR AN AIRPORT SHUTTLE SERVICE
BY AVION SERVICES CORPORATION

Before Board Panel:

Graham Lane	- Board Chairman
Monica Girouard	- Board Member
Susan Proven	- Board Member

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
January 19th, 2009

Pages 1 to 62

APPEARANCES

1
2 Walter Saranchuk) Board Counsel
3 Nicole Wray)
4
5 Paul Edwards) Avion Services Corp.
6 Shelley Tataryn)
7
8 Sidney Soronow) Unicity Taxi Ltd. and
9) Duffy's Taxi (1996) Ltd.
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1	LIST OF EXHIBIT		
2	Exhibit No.	Description	Page No.
3	PUB-1	Notice of Pre-hearing Conference,	
4		dated December 22nd, 2008	16
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10		dated November 24th, 2008, on this	
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24			
25			

1 --- Upon commencing at 10:01 a.m.

2

3 THE CHAIRPERSON: Okay, good morning,
4 everyone. I am going to call this proceeding to order.
5 My name is Graham Lane. I'm Chairman of the Public
6 Utilities Board. I'm joined on this panel by members
7 Proven and Girouard.

8 Assisting the proceeding will be Board
9 counsels, Walter Saranchuk and Nicole Wray and, as well,
10 Board secretary, Gerry Gaudreau. Depending on
11 developments, the Board may also rely on Roger Cathcart,
12 the Board's accounting and general business advisor.

13 The Avion Service Corporation has applied
14 to the Public Utilities Board to operate a shuttle
15 service, a city connect shuttle service, from the
16 Winnipeg Airport to and from downtown hotels, with an
17 expectation of future additions of local area hotels to
18 the proposed service.

19 A Notice of Application that was dated
20 November the 8th, 2008 was issued by the Board and
21 published in the two (2) Winnipeg daily newspapers, as
22 well as La Liberte, and with copies sent specifically to
23 the City of Winnipeg Chief Administrative Officer,
24 Unicity Taxicab Association, Manitoba Taxicab Board,
25 Manitoba Hotel Association, and the Winnipeg Airport

1 Authority.

2 To date, the Board has received written
3 submissions from Avion's counsel, Mr. Paul Edwards, in
4 support of the Application, and from Mr. Sid Soronow,
5 counsel for Unicity and Duffy's Taxi, in opposition to
6 the Application. The Board has also received three (3)
7 letters in support of the shuttle service: One (1) from
8 Destination Manitoba Inc., one (1) from Travel Manitoba,
9 the other from the Manitoba Hotel Association.

10 No other parties have filed any documents
11 or applied for Intervenor status in this proceeding.

12 Based on the filings, two (2) preliminary
13 issues have arisen that warrant consideration and
14 decisions by the Board. The first issue concerns the
15 jurisdiction of this Board to deal with Avion's
16 Application. The second relates to the method of
17 procedure the Board will employ towards arriving at a
18 decision on the Application, assuming the Board first
19 finds that it can properly do so on jurisdictional
20 grounds.

21 The procedural question is whether the
22 Board should conduct an oral hearing or a paper hearing.
23 A paper-based proceeding involves exchanges of documents.
24 Both processes are provided for in the Board's rules of
25 practice and procedure and allow for the Board to

1 adjudicate matters before it.

2 As both of these issues are clearly
3 important, the Board decided to hold this pre-hearing
4 conference; this for the purposes of proving the
5 participants in the hearing, addressing the two (2)
6 preliminary issues raised, and 3) setting a procedural
7 timetable; that of course subject to the preliminary
8 matter of jurisdiction having being decided in the
9 affirmative.

10 Participants. In addition to Avion and
11 Unicity/Duffy's coalition any other party present today
12 may also make a position known, if so inclined. I will
13 provide for such an opportunity, and if it is to be taken
14 up you may then express your position and speak to the
15 matters at hand, upon being given leave to do so having
16 being provided by the Chair.

17 As well, interested parties may seek
18 Intervenor status in order to be able to participate in
19 whichever process is determined by the Board following
20 this conference. Again, subject to, in advance, an
21 affirmative decision having being made as to
22 jurisdiction.

23 As to the Board's jurisdiction, briefly by
24 way of background, Avion initially applied to the
25 Manitoba Taxicab Board for approval to operate a shuttle

1 service from the airport to and from city hotels. That
2 application was apparently rejected on the grounds that
3 Avion had failed to demonstrate a public need.

4 Rather than reapply to the Taxicab Board,
5 Avion applied to the City of Winnipeg for a licence to
6 operate the airport shuttle service. In response to an
7 inquiry by the City, the Taxicab Board indicated it did
8 not have jurisdiction in the matter and withdrew its
9 involvement.

10 This Board understands that five (5)
11 public meetings were held in the course of the City's
12 process, and on January 9th, 2007 the City's Standing
13 Policy Committee on Infrastructure and Public Works,
14 reported to City Council on the matter. Council's
15 decision, as recorded in its minutes of January 24th,
16 2007, was to accept the recommendation of its Policy
17 Committee and pass the following resolution. Quote:

18 "That in accordance with Section 163
19 subsection 3 of the City of Winnipeg
20 charter, an agreement with Avion
21 Service Corporation be approved, that
22 is renewable a five (5) years
23 intervals, that authorizes Avion
24 Service Corporation to operate its
25 proposed city connect shuttle service

1 and that contains the following
2 conditions. Avion Service Corporation
3 be required to obtain from the Public
4 Utilities Board approval of its
5 agreement with the City, and
6 authorization to operate a local
7 transportation service before beginning
8 to operate the proposed shuttle
9 service."

10 A number of other conditions were also
11 imposed and set out in City council's resolution, which
12 also contain the proviso:

13 "That such agreement not be executed by
14 the City unless and until the Public
15 Utilities Board provides its approval
16 of the agreement and authorizes the
17 operation of the local transportation
18 service."

19 Pursuant to that decision and resolution
20 of City Council, Avion applied to this Board for approval
21 of its proposed airport shuttle service operation.

22 City's Council resolution was based on
23 Section 163(3) of the City's governing legislation, the
24 City of Winnipeg Charter Act. Therefore in the case of
25 this application, this Board would be discharging the

1 responsibility assigned to it by the City of Winnipeg
2 under the City's own enactment.

3 This Board's view has been that Section
4 107 of the Public Utilities Board Act, provides the Board
5 authority to hold this proceeding and arrive at a
6 decision to either approve or deny Avion's proposed
7 shuttle service. The jurisdictional issue arises out of
8 the contention by the counsel for Unicity and Duffy's,
9 that no agreement, as such, exists between the City and
10 Avion relative to operation of the shuttle service.

11 The contention is, is that subsection
12 163(3) of the City of Winnipeg Charter Act requires such
13 an agreement in order for the Public Utilities Board to
14 gain jurisdiction in the matter. Opposed to that view,
15 counsel for Avion has maintained that there is no
16 question that the City Council has agreed to follow -- to
17 allow the shuttle service, subject to the Public
18 Utilities Board approval of City's -- of the City's
19 agreement with Avion.

20 The Board understands that Avion's
21 position is that an agreement exists, though its
22 execution has been postponed and that subsection 163(3)
23 does not stipulate that an agreement be executed by the
24 parties, in order for this Board to gain jurisdiction.

25 Again, the Board has received written

1 submissions from Mr. Edwards on Avion's behalf, and Mr.
2 Soronow on behalf of the two (2) taxi cab companies.

3 Today, we are prepared to hear
4 supplementary argument from the two (2) parties that have
5 already expressed views, or for any other party here
6 present on the jurisdictional issue.

7 As to the form of hearing, City Council's
8 resolution also recommended that the Public Utilities
9 Board hold a public hearing to review all aspects of the
10 operation of the proposed services. In its published
11 Notice of Application, relative to this matter, the Board
12 indicated that in an effort to restrain costs, it is the
13 Board's intent to assess this application through a paper
14 hearing process, that is, unless sufficient concerns are
15 expressed to warrant a public oral hearing.

16 So one (1) of the purposes of this pre-
17 hearing conference is to allow for parties present to
18 make presentations as to the form of the proceeding,
19 assuming again that the jurisdictional issue has been
20 decided in the affirmative. After which, the Board will
21 sequester itself and come to a decision on what form of
22 hearing will best serve the public interest.

23 I should also advise that written
24 submissions addressing whether the proceeding should be
25 oral or paper-based have been received from counsels from

1 Avion and the two (2) taxicab companies. So if they wish
2 to comment further this morning on these -- this issue, I
3 suggest that we be aware of our time constraints. We
4 intend to conclude this pre-hearing conference, if
5 possible, by noon and to avoid repeating what has already
6 been covered in written submissions.

7 Discussion on this matter best be
8 restricted to the merits of oral versus paper process,
9 not the merits of the shuttle service application.
10 Whichever process is decided on the merits of the
11 application will be well canvassed. Counsel are welcome,
12 of course, to elaborate briefly on their respective
13 positions and make any additional argument supporting
14 them, but, again, hopefully, without undue repetition.

15 And again, of course, anyone else present
16 who wants to make a comment or make his or her position
17 known on the hearing procedure, will also be welcome to
18 do so, again taking into account our time constraints.

19 So in conclusion, interested parties may
20 seek Intervenor status in order to be able to participate
21 in the exchange of information requests, present
22 evidence, and conduct cross-examination, that, the
23 latter, if the Board decides to hold an oral public
24 hearing. Formal written applications will be required to
25 be submitted to the Board eventually, but the Board

1 the proceedings in this matter will have to be discussed
2 this morning. That will necessarily be in very general
3 terms and will centre around dates for various steps in
4 the process and an oral hearing; again, if the Board
5 decides to hear one and has decided already in the
6 affirmative, as to the jurisdictional issue.

7 Having made these opening comments, I will
8 now call on those present here today to identify
9 themselves for the record, indicate the interests they
10 represent, and provide introductory comments. To begin
11 with, I will start with Mr. Saranchuk.

12 MR. WALTER SARANCHUK: Thank you, Mr.
13 Chairman. For the record, my name is Walter Saranchuk of
14 the law firm of Pitblado LLP. Joining me this morning is
15 Ms. Nicole Wray, W-R-A-Y, of our firm and we appear as
16 Board counsel.

17 THE CHAIRPERSON: Thank you, Mr.
18 Saranchuk. I will call now on Mr. Edwards, for Avion.

19 MR. PAUL EDWARDS: There we go. Paul
20 Edwards, legal counsel for Avion Services Corporation, of
21 the law firm, Duboff, Edwards, Haight & Schachter Law
22 Corporation. With me to my right is Ms. Shelley Tataryn.
23 She is the general manager of Avion Services Corporation.

24 THE CHAIRPERSON: Thank you, sir.
25 Welcome.

1 And for Unicity Duffy's, Mr. Soronow?

2 MR. SIDNEY SORONOW: Good morning, Mr.
3 Chairman and Members of the Board. My name is Soronow,
4 Sid Soronow. I'm a lawyer. I'm representing Unicity
5 Taxi and Duffy's Taxi and with me this morning are a
6 number of people. We have Joan Wilson, who is General
7 Manager of Unicity, John King, who is General Manager of
8 Duffy's Taxi, and behind them, executive members or
9 directors of the ver -- two (2) companies.

10 THE CHAIRPERSON: Thank you, sir. Is
11 there any other party present that wishes to identify
12 themselves and to allow themselves the opportunity to
13 comment at some point?

14 Okay. We will being then with the issue
15 of jurisdiction, which we have to decide on first. I
16 will start with Mr. Edwards.

17 Mr. Edwards, do you have any comments on
18 this issue?

19 MR. WALTER SARANCHUK: Mr. Chairman, just
20 before Mr. Edwards begins, excuse me for the
21 interruption, there are a few exhibits that should be
22 marked into the evidence for the purposes of this
23 hearing. Copies of the exhibit list in draft form have
24 been circulated.

25 The first exhibits are those of the Public

1 Utilities Board. Exhibit PUB-1 is the Notice of Pre-
2 hearing Conference, dated December 22nd, 2008.

3

4 --- EXHIBIT NO. PUB-1: Notice of Pre-hearing
5 Conference, dated December
6 22nd, 2008

7

8 MR. WALTER SARANCHUK: The second PUB
9 exhibit is PUB-2, is a Notice of Application dated
10 November 5, 2008.

11

12 --- EXHIBIT NO. PUB-2: Notice of Application dated
13 November 5, 2008

14

15 MR. WALTER SARANCHUK: And the third is
16 PUB Exhibit 3, the Rules of Practice and Procedures.

17

18 --- EXHIBIT NO. PUB-3: Rules of Practice and
19 Procedures

20

21 MR. WALTER SARANCHUK: To be introduced as
22 exhibits on behalf of Avion, Avion Number 1 -- and I'm
23 sure Mr. Edwards will concur; if he doesn't, he'll let us
24 know -- that exhibit Avion Number 1 is application, dated
25 October 21st, 2008.

1 --- EXHIBIT NO. AVION-1: Application dated October
2 21st, 2008
3

4 MR. WALTER SARANCHUK: And the next
5 exhibit is Avion Exhibit Number 2, the letter to the
6 Public Utilities Board, dated November 24th, 2008.
7

8 --- EXHIBIT NO. AVION-2: Letter to the Public
9 Utilities Board, dated
10 November 24th, 2008, on this
11 issue of jurisdiction and
12 response to letters of the
13 17th and the 20th
14

15 MR. WALTER SARANCHUK: And now moving to
16 the next two (2) exhibits. Again, in this case, dealing
17 with Unicity and Duffy's exhibits, Mr. Soronow will let
18 us know if there's any objection that he has.

19 The first being Unicity/Duffy Exhibit
20 Number 1, the letter and submission of December 11th,
21 2008, from Sidney Soronow.
22

23 --- EXHIBIT NO. U/D-3: Letter and submission of
24 December 11th, 2008, from
25 Sidney Soronow (Exhibit

1 number changed as per
2 comments on page 20)

3
4 MR. WALTER SARANCHUK: And the second
5 exhibit, Unicity/Duffy Number 2, the supplemental letter,
6 dated December 11th, 2008, from Sidney Soronow.

7
8 --- EXHIBIT NO. U/D-4: Supplemental letter, dated
9 December 11th, 2008, from
10 Sidney Soronow (Exhibit
11 number changed as per
12 comments on page 20)

13
14 MR. SIDNEY SORONOW: Mr. Chairman, in
15 relation to that, it seems to me that -- I note that Mr.
16 Edwards' letter of November 24, 2008, is identified as an
17 exhibit, but that letter is responsive to my submissions
18 of November 17, 2008, and November 20, 2008. Both of
19 which address the issue of the jurisdiction of the Board,
20 just as Mr. Edwards' one (1) letter of November 24th
21 responds to the issue of jurisdiction to the Board.

22 So it would seem to me that the letters of
23 November 17th and 20th ought to, in equivalent manner, be
24 treated as exhibits.

25 MR. WALTER SARANCHUK: Those -- those

1 exhibits -- if you wouldn't mind just identifying the
2 author.

3 MR. SIDNEY SORONOW: Those exhibits is --
4 it's firstly a letter to the Public Utilities Board from
5 myself, Sidney Soronow, dated November 17, 2008, and a
6 follow-up letter, also from myself to the Public
7 Utilities Board, dated November 20, 2008.

8 THE CHAIRPERSON: Mr. Edwards...?

9 MR. WALTER SARANCHUK: I don't -- I don't
10 know if there's any objection by Mr. --

11 MR. PAUL EDWARDS: No objection. And,
12 Mr. Chair and Mr. Saranchuk, I just wanted to note that
13 there were two (2) letters dated November 24, 2008, from
14 Avion to the Board, and I'm not -- I don't -- I'm not
15 sure which one is being referred to in Exhibit Avion-2.

16 The first letter was a response to some
17 questions from the Board. And the second letter, as Mr.
18 Soronow indicates, was on this issue of jurisdiction and
19 responded to his letters of the 17th and the 20th.

20 MR. WALTER SARANCHUK: Yes, it would be
21 the latter that would be the exhibit that we had in mind
22 --

23 MR. PAUL EDWARDS: I see.

24 MR. WALTER SARANCHUK: -- Mr. Chairman.
25 That was the one dealing with the issue before the Board,

1 as raised by Mr. Soronow. So that's the one that's to be
2 marked as the exhibit Avion Number 2.

3 Insofar as the Unicity/Duffy exhibits are
4 concerned then, just to go by chronological order, if
5 it's easier, we can have the letter from Sidney Soronow,
6 dated November 17th, marked as Unicity/Duffy's U/D-1.

7

8 --- EXHIBIT NO. U/D-1: Letter from Sidney Soronow,
9 dated November 17, 2008

10

11 MR. WALTER SARANCHUK: And then have the
12 letter from Mr. Soronow, dated November 20th, Exhibit U/D
13 Number 2.

14

15 --- EXHIBIT NO. U/D-2: Letter from Mr. Soronow,
16 dated November 20, 2008

17

18 MR. WALTER SARANCHUK: And then the
19 letter and submission of December 11th of 2008, from Mr.
20 Sidney Soronow, is at U/D Exhibit Number 3.

21 And the supplementary -- supplemental
22 letter, dated December 11, 2008, from Sidney Soronow, as
23 Exhibit U/D Number 4.

24 Is that satisfactory?

25 MR. SIDNEY SORONOW: Totally. Thank you.

1 THE CHAIRPERSON: Mr. Edwards referred to
2 two (2) letters from himself as well.

3 MR. WALTER SARANCHUK: Yes, it's just the
4 first one dealing with the issues before the Court today
5 -- I'm sorry, before this Board today; that was to be
6 considered as the Avion Exhibit Number 2.

7 THE CHAIRPERSON: Mr. Edwards...?

8 MR. PAUL EDWARDS: That's fine. Thank
9 you for the clarification.

10 THE CHAIRPERSON: Very good. Okay, we
11 are back on track.

12 So, Mr. Edwards, we would like to hear
13 from you, if we may, on the jurisdiction issue.

14

15 SUBMISSIONS BY MR. PAUL EDWARDS:

16 MR. PAUL EDWARDS: Thank you very much
17 Mr. Chair, members of the Board, and -- and
18 representatives of the Board that are here today. I'm
19 very cognizant of two (2) of your comments: One (1) with
20 respect to the short time that we have. And secondly,
21 obviously not to repeat what has already been put before
22 the Board in writing, and you have that in the letter of
23 November 24th, 2008.

24 And the issue of jurisdiction, I'm going
25 to add just a couple of additional comments. And I do

1 want to draw the Board's attention to the fact that both
2 parties to this agreement, as Avion calls it, believe
3 it's an agreement, and reference it as such.

4 And so I think Mr. Soronow certainly
5 raises a -- a technical objection in that sense; that
6 there isn't a further document before you. But the fact
7 is it doesn't require that document, doesn't require the
8 signatures, doesn't require even a written document, and
9 Section 163 makes none of those requirements.

10 And you have both parties here believing
11 and referencing an agreement that they have. And I'm
12 just going to, very briefly, remind all present and the
13 Board, of the wording of the minutes. And in particular,
14 those minutes state in paragraph number 1, that:

15 "In accordance with Section 163(3) of
16 the City of Winnipeg Charter, an
17 agreement with Avion Services
18 Corporation be approved."

19 That was the motion and it was passed. It
20 has been approved.

21 Secondly, I note -- and I know I risk
22 repeating myself here -- but many of the matters that Mr.
23 Soronow indicated might be in a further document, in fact
24 are listed. This is a fairly detailed motion that came
25 before the City, set out various matters in detail.

1 Page 2 of those minutes make clear, under
2 Sub H, that the agreement -- the only thing that's left
3 is that it be executed, only after the Public Utilities
4 Board -- and again, execution is not required to find an
5 agreement, would be the position of Avion.

6 Finally, I restate what is number 3 of
7 those minutes, that the proper officers -- in other
8 words, this doesn't go back to the City Council -- but
9 the proper off -- officers of the City be authorized to
10 do all things necessary to implement the intent; not to
11 renegotiate, not to review, reconsider; to implement.

12 This is a done deal, in detail. And as
13 you've said yourself, Mr. Chair, it was a lengthy and
14 quite -- and repeated process at City Hall over many
15 hearings.

16 So the position of Avion I -- I won't
17 repeat, but is that there is, in fact, in law an
18 agreement; that Section 163(3) speaks of an agreement,
19 but does not require what that would constitute, and
20 therefore it is certainly open to the Board. And Avion
21 requests that the Board find that, in fact, there is an
22 agreement.

23 And the City has received all of the
24 materials from the Board and from the parties. They're
25 not here. They're certainly not raising any concern that

1 Mr. Soronow sets forward -- forth. Rather, it's very
2 clear that these parties believe they have an agreement.

3 Those would be the submissions, subject to
4 any questions that counsel or members of the Board may
5 have.

6 THE CHAIRPERSON: Thank you, Mr. Edwards.
7 Mr. Soronow...?

8

9 SUBMISSIONS BY MR. SIDNEY SORONOW:

10 MR. SIDNEY SORONOW: Thank you, Mr.
11 Chairman. I too am mindful of the fact that the Board is
12 under a time constraint, and obviously, therefore,
13 doesn't wish to have counsel repeat the submissions that
14 appear in their written material. And indeed, I would
15 think it would be unnecessary to do so, because I have no
16 doubt that the members of the tribunal have read,
17 absorbed, and are considering those submissions.

18 My purpose today, however, is to
19 supplement those submissions and try to perhaps explain
20 the approach that we have to this particular issue,
21 certainly in a different way, because I'm not intending
22 to repeat what was said in a written submission.

23 One (1) thing we should clearly understand
24 is that there is no doubt in this instance that there is,
25 in fact, a preliminary fact or circumstance, the

1 existence or nonexistence of which determines whether
2 this Board does or does not have jurisdiction. So that's
3 not in dispute. Where there appears to be a difference
4 of opinion is, as to what is required to meet the
5 requirements of that preliminary jurisdictional fact.

6 Clearly, we all know that there must be an
7 agreement before this Board has jurisdiction to proceed
8 with this inquiry. And it's interesting and -- that the
9 word "agreement" appears on three (3) occasions in
10 Section 163 Sub 3. And the tone for the interpretation
11 of that word, I suggest, is to be found where it appears
12 on the first occasion. It appears in the fourth line of
13 163 Sub 3, where it says:

14 "The City may, at the person's request,
15 enter into an agreement with the
16 person."

17 Now, if we looked at that and we
18 substituted for a moment the reference to Avion, it would
19 read:

20 "The City may, at Avion's request,
21 enter into an agreement with Avion."

22 I'm submitting to this Board, that any
23 logical appreciation of this terminology leads to an
24 inescapable conclusion that to complete the concept of
25 the City entering into an agreement with Avion, requires

1 that there, in fact, be an agreement between two (2)
2 contracting parties.

3 Keep in mind that the statute does not
4 speak in terms of merely the City passing a motion, or
5 passing a resolution in support of a proposal by the
6 Executive Policy Committee. It's clear from the
7 terminology of the statute, and we have to engage in some
8 statutory interpretation, had it been the intention of
9 the statute that all that was required was a resolution
10 of City Council, the legislators are more than competent,
11 and certainly the legislative draftsmen are more than
12 competent, to put it on that footing and they chose not
13 to.

14 So, I submit to you, which is something I
15 didn't specifically address in my written submission,
16 that the tone of what is to be interpreted as the word
17 agreement is to be drawn from its first appearance in the
18 statutory language -- now -- so that there is no
19 question.

20 And I believe inferentially or impliedly
21 mentioned in the Chairman's remarks, no agreement has
22 been drafted by the city, let alone entered into with
23 Avion. As I said, all that has transpired is
24 approximately two (2) years ago, the Executive Policy
25 Committee made a recommendation to City Council and there

1 was a narrow affirmative vote in relation to it. In the
2 intervening two (2) years, no steps have been taken,
3 either by the city or by Avion, to turn that resolution
4 into an actual agreement.

5 Now, I hear Mr. Edwards' position, but I
6 ask you to consider, having visualized what -- the first
7 time the word agreement appears in the statute; it says
8 "enter into an agreement" and -- and the word agreement
9 appears two (2) more times in Section 163.

10 Firstly, it appears again in the last line
11 of the preamble, in which it says:

12 "Service of such kind and in such part
13 of the City, as is specified in the
14 agreement."

15 The words "specified in the agreement" are
16 obviously a reference to the earlier use of the term
17 "agreement". It's to the specifications, as set out in
18 the agreement, as above referred to a few lines earlier
19 in the preamble.

20 What was being referred to? An agreement
21 entered into between Avion and the City of Winnipeg. And
22 the problem is, I submit, Mr. Chairman and Members of the
23 Board, that no such agreement was entered into. Those
24 aren't my words, that's the statute words.

25 The last use of the word "agreement"

1 appears in the subparagraph 8, where it says:

2 "Before beginning to operate the
3 service, the person must obtain, from
4 the Public Utilities Board, approval of
5 the agreement."

6 "The agreement" is again a reference to
7 the words in the preamble: The agreement entered into
8 between the city and Avion.

9 Again, if the problems is no such
10 agreement was entered into, even two (2) years after the
11 resolution of City Council.

12 This Board ought not to be asked to
13 consider approval of an agreement that doesn't exist.
14 Nor, should this Board be called upon to speculate as to
15 what might constitute all of the applicable terms,
16 conditions, representations, or obligations, set out in
17 the agreement, if, as, and when, it is actually crafted
18 and ultimately finalized and executed.

19 For those of us in this room who have had
20 experience with the City of Winnipeg, we know that there
21 is a substantial process and a substantial difference
22 between merely a resolution of some body of the City of
23 Winnipeg, even if it's the body known as City Council.
24 That's quite a difference between that having occurred
25 and the finalization and execution of an agreement.

1 Because from experience with the City of Winnipeg, one
2 would find that what the resolution is, is essentially
3 just an approval in principle.

4 And then the matter is turned to the City
5 solicitors who look at the specifics of the circumstance,
6 and determine what body and what form this agreement
7 should take and what else needs to be in that agreement.
8 It puts meat on the bones of what has been approved in
9 principle.

10 And I gave some suggestions in my written
11 submission as some -- as to some of the meat that might
12 have to go on those bones, in terms of the kind of
13 training needed for drivers, the kind of vehicle
14 specifications, quality, characteristics of those
15 vehicles, the consequences of any breach by Avion, other
16 such matters.

17 You know, Mr. Chairman, and Members of the
18 Board, there is a saying, "the devil is in the details,"
19 and the fact is the Board, this Board, has no opportunity
20 to look at a document which contains all of the details
21 that are relevant to the proposed service, and to carry
22 forward with an agreement in principle, through the
23 approval of the Executive Policy Committee decision by
24 City Council, to create all of the -- the meat on those
25 bones. That is what this tribunal ought to have the

1 opportunity to look at, not speculate as to what might be
2 the final product of that.

3 I read -- I heard Mr. Edwards, just a
4 short time ago, and -- and he said to you that he thought
5 that the City of Winnipeg considered what they did, in
6 terms passing or approving a recommendation of the
7 Executive Policy Committee, as being an exercise in which
8 they thought that constituted an agreement. And I come
9 to a wholly different conclusion.

10 And I -- and I know, Mr. Chairman and
11 Members of the Board, you will cast a close eye to
12 reading the Council decision, being the approval, which I
13 say is an approval in principle, because as Mr. Edwards
14 read -- he said that:

15 "In accordance with Section 163(3) of
16 the City of Winnipeg charter an
17 agreement with Avion be approved."

18 What that means is that City Council was
19 approving entering into an agreement. It took something
20 more. They were giving an approval for a process to go
21 forward. And indeed, I look at other portions of the --
22 and -- and indeed portions of it cited by Mr. Edwards,
23 where it says:

24 "But with a proviso that such agreement
25 not be executed by the City, unless and

1 until the Public Utility (sic)
2 Board..." Et cetera.

3 "The proviso that such an agreement...":
4 such an agreement being the agreement that the City was
5 authorizing or approving going forward to be entered into
6 with Avion. And that agreement, they are saying, is not
7 to be signed until something else happens.

8 Well, where is this agreement? Where is
9 taking merely a resolution and turning it into what
10 amounts to an agreement until an agreement exists? It
11 says, "such agreement not [to] be executed". What were
12 they talking about when they said "such agreement"?

13 It had to be a real document, otherwise
14 there's nothing for them to execute. So clearly City
15 Council itself, in the form of this resolution identified
16 the expectation that there would be, or would go forward
17 to the point of creating and drafting and finalizing an
18 agreement, being an -- a document capable of execution.
19 To date, no such character of document exists.

20 And so I take it that when the statute
21 talks about "enter into an agreement," that the city may,
22 at the person's request, enter into an agreement with the
23 person, that when you read that and you couple it with
24 what is contained in the actual resolution, you will have
25 no choice but to come to the conclusion that the City

1 itself did not consider what they were doing by way of a
2 resolution to constitute an agreement.

3 The City recognized that something more is
4 required, and that ultimately there would be a document
5 capable of execution. And I challenge My Friend to point
6 out what document exists today that is capable of
7 execution. It doesn't. It hasn't been drafted. It
8 doesn't yet exist.

9 So this Board should take notice of the
10 fact that on the face of the resolution of City Council,
11 they did not consider what exists at that moment to be an
12 agreement, but this was something to come into existence
13 in the future. It simply hasn't happened. Is that
14 Avion's fault? Is it the City's fault? I don't think
15 that's an issue for this Board to consider.

16 It is of imperative character that
17 statutory tribunals not assume a jurisdiction when a
18 preliminary jurisdictional fact is lacking. That is not,
19 as My Friend would try to paint it, a matter of
20 technicalities, but a matter of substance.

21 When legislative draftsmen and legislators
22 create statutory tribunals, they often create or include
23 in the legislation -- I can think of obviously tonnes of
24 examples -- preliminary jurisdictional facts.

25 You know, you can't go to the Labour Board

1 and -- and perhaps get a certificate for union
2 representation of people who don't qualify under the
3 Labour Relations Act to be unionized. So that's a
4 preliminary jurisdictional fact; they have to be of a
5 certain character of employment. You can't be organizing
6 the Vice President and senior managers as part of a group
7 of employees to be unionized.

8 So virtually, every kind of statutory
9 circumstance associated with statutory tribunals has this
10 concept of preliminary jurisdictional facts or
11 circumstances that must exist before the Board can assume
12 its jurisdiction.

13 So that is not a matter of technicality.
14 The courts sometimes get involved. Sometimes there can
15 be legitimate disputes, as to whether or not the
16 preliminary jurisdictional fact exists.

17 I invite this tribunal to take a close
18 look at our written submissions, a close look at the
19 comments made today. But most of all, I invite you to
20 take a close look at Section 163: How is the word
21 "agreement" used? What is its first use, which is where
22 it says "enter into an agreement"?

23 And I think that when you do that and then
24 you review, in that context, the resolution of the City
25 of Winnipeg Council, you will see that what the statute

1 contemplated was the existence of an agreement, and that
2 what the resolution contemplated -- that it was just an
3 approval, in principle, of an agreement to be created and
4 executed in the future. It hasn't been created. It
5 doesn't exist.

6 And this Board ought not to be called upon
7 to exercise its jurisdiction, which is called here
8 "approve -- approval of the agreement," when no such
9 agreement exists. And we ought not to take shortcuts to
10 accommodate Avion. Maybe they're frustrated by the
11 objection that's made. So be it. That's not a reason to
12 take a shortcut to jurisdiction, or to leave the Board's
13 award open to challenge. Let's do things right.

14 I call upon you, therefor, and leave in
15 your capable hands the issue of the preliminary question.
16 And obviously if the Board is to determine that issue in
17 our favour, then obviously there would be no further
18 proceedings associated with the current application,
19 which presumably does not foreclose the opportunity for
20 them to come back at a later date once an agreement
21 exists.

22 Thank you so much.

23 THE CHAIRPERSON: Thank you, Mr. Soronow.
24 Mr. Saranchuk -- or sorry, Mr. Edwards...?

25

1 REPLY BY MR. PAUL EDWARDS:

2 MR. PAUL EDWARDS: Thank you very much,
3 Mr. Chair. Just three (3) very quick points.

4 Firstly, let me be clear that Avion
5 requests this Board to approve the agreement, as set out
6 in the Council decision. That is the agreement so --
7 that is the document, that is the written agreement,
8 those are the terms.

9 So I want to be clear, Avion is not here
10 asking the Board to approve some other document. There
11 are many agreements that lead in as -- as they may lead
12 to other documents but Avion is here saying those
13 minutes, that decision, that's the agreement. So to be
14 clear on that.

15 And frankly, Avion's view would be that
16 the Board's approval would be, would reference that and
17 those terms, as the agreement between the parties. And
18 if there was some other document, which included other
19 terms or left some of these out, clearly that would not
20 be in compliance with the Board's Order, and I'm sure Mr.
21 Soronow and others would -- would make that know. And
22 frankly, it would be a public document. It's a contract,
23 an agreement with the City of Winnipeg.

24 The second point: The provisions of the
25 Council minutes of the 24th of January, '07, do not say

1 "appropriate insurance levels," or "appropriate fees,"
2 or, you know, "reasonable provisions," with respect to
3 safety vehicles. It's extremely specific. It says
4 exactly what the rate of fees has to do, so cites the
5 regulation for the safety of the vehicles and the
6 provisions, sets the amount of insurance. This is a very
7 detailed document, and certainly not -- all of the
8 material matters, which would need to be specified for it
9 to be an agreement are there.

10 The third point: Just on this issue of My
11 Friend's comments on the words of section 163(3) and
12 specifically the words "enter into an agreement". Later
13 on in section 163 bracket 3, it talks about before
14 beginning to operate the service. So I think it's
15 certainly clear that this process is a pre-operation
16 process; it's intended to happen before this goes into
17 effect, and there is operation pursuant to the terms of
18 these Council minutes.

19 So the position of Avion on that would be
20 that it doesn't require approval of an executed
21 agreement; it uses the word "before," it talks about
22 agreement, and section 163(3), in its opening sentence,
23 talks about entering into an agreement. Again, there
24 aren't any specifics beyond that and Avion says this
25 motion, insofar as it says "be approved," once passed it

1 is approved and it's a deal.

2 Thank you.

3 THE CHAIRPERSON: Thank you, sir. Mr.
4 Soronow, do you have anything to -- in rebuttal?

5

6 REPLY BY MR. SIDNEY SORONOW:

7 MR. SIDNEY SORONOW: Well, the only
8 comment I'd make is that it -- it says, "But with the
9 proviso, such agreement not be executed by the City
10 unless and until..." and it clearly contemplates an
11 agreement capable of execution. And of course in the
12 body of that agreement it could simply have, when
13 prepared, say:

14 "This agreement shall only be effective
15 upon the approval of the Public
16 Utilities Board, notwithstanding that
17 it has been executed."

18 That's not normal conta -- contract
19 language that happens all the time; the parties execute
20 an agreement, but specifically have a clause indicating
21 that it will -- won't be effective until something else
22 happens. So the -- the resolution clearly contemplates
23 the execution of an agreement. None exists. Thank you.

24 THE CHAIRPERSON: Thank you, sir. Mr.
25 Saranchuk, do you have any advice for the Board?

1 MR. WALTER SARANCHUK: Yes, Mr. Chairman,
2 as Board counsel, we generally take no position in
3 respect of issues before the Board except of course in
4 the case of, perhaps guiding the Board, advising the
5 Board, in respect of some procedural issue or on a
6 jurisdictional issue.

7 In this case of course, we have a
8 situation where the Board hasn't been called upon to
9 interpret its own legislation. It's not the PUB Act, and
10 its provisions that's being called -- that are being
11 called upon to be interpreted by this Board. The fact is
12 that the matter has been brought before the Board by
13 virtue of the City's interpretation of its own
14 legislation, mainly, the City of Winnipeg Charter Act.

15 So you've got a situation where expressly
16 you have the Applicant, Avion Services Corporation,
17 maintaining that it has an agreement with the City. And
18 either expressly or impliedly you have the City, by
19 referring this matter to the Board, indicating that it
20 believes it has an agreement.

21 So basically when you come right down to
22 it the Board is being asked by the Unicity and Duffy's
23 Taxi people to rule that there is no agreement, when the
24 parties to such an agreement, ostensibly at least, if not
25 in fact, have said that there's an agreement. So it puts

1 the Board in a very difficult position, I might say.

2 And so that's the only comments that I
3 have to make. But again, that is the situation before
4 the Board.

5 MR. SIDNEY SORONOW: Mr. Chairman...?

6 THE CHAIRPERSON: Mr. Soronow...?

7 MR. SIDNEY SORONOW: Can I just comment.
8 I'm not certain where Mr. Saranchuk comes to the view of
9 saying the City believes there's an agreement. But the
10 question at the end of the day isn't what this person
11 believes or that person believes, the -- the -- it comes
12 down to an examination of the legislation and an
13 interpretation in the first instance to be made by this
14 tribunal as to what those words mean.

15 Perhaps it's unfortunate that the enabling
16 legislation is not part of the Public Utilities Act, but
17 rather the -- the City of Winnipeg Act. And that's a
18 somewhat I think unusual situation. I can't readily
19 think of a -- a similar example.

20 But it -- it still forces the Public
21 Utilities Board to be -- I'll call it the arbiter -- of
22 what does that language mean, and, you know, that's your
23 decision. And it wouldn't matter, and matters not at
24 all, whether Avion thinks there's an agreement or some
25 person at the City, not the City council, but the person

1 at the City thinks there's an agreement.

2 No, the word is used in a statute. It is
3 your function in taking into consideration all of the
4 background facts to interpret that legislation and
5 determine whether you believe the preliminary
6 jurisdictional fact exists.

7 THE CHAIRPERSON: Thank you, Mr. Soronow.
8 Time constraints or not, we are going to stand down for
9 what time it takes us and consider this particular
10 matter. We will give you an update, depending on how our
11 proceedings goes, as to how long it will take us on this
12 matter. But we'll stand down now.

13 MR. SIDNEY SORONOW: Is there a minimum
14 amount of time?

15 THE CHAIRPERSON: Let's say a minimum of
16 fifteen (15) minutes.

17 MR. SIDNEY SORONOW: Thank you.

18

19 --- Upon recessing at 10:51 a.m.

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

21

22 BOARD DECISION ON JURISDICTION:

23 THE CHAIRPERSON: Okay. On the matter of
24 jurisdiction, the Board was given this assignment under
25 Section 107 of the Public Utilities Board Act, on the

1 referral of the City of Winnipeg, which relied on its own
2 legislation, particularly 163(3).

3 While we have listened attentively to the
4 concerns and positions articulated by Mr. Soronow, we
5 conclude that the City of Winnipeg has agreed to allow
6 Avion to operate a shuttle service to and from the
7 airport if this Board approves Avion's application. That
8 application contains specifics, and through the
9 proceeding to follow we will consider those specifics.
10 And this Board, through the mandate provided it by the
11 PUB Act, has the opportunity to accept or reject or vary
12 those specifics.

13 In short, this Board will hear Avion's
14 application. More commentary on our decision will follow
15 in our written order, to arise out of this pre-hearing
16 conference.

17 So we would like now to move on to
18 consider whether the proceeding will be oral hearing or
19 paper-based.

20 I'll call on first, Mr. Edwards.

21

22 SUBMISSIONS BY MR. PAUL EDWARDS:

23 MR. PAUL EDWARDS: Thank you very much,
24 Mr. Chair, Members of the Board. The Board -- I start
25 with the position that the Board has the jurisdiction

1 under its rules which defines, and I believe the term is
2 "written hearing". In Section 2, Definitions, there is a
3 reference to written hearing. It means:

4 "A hearing at which the proceeding
5 before the Board is conducted entirely
6 in writing."

7 Certainly, that's provided for under the
8 Act; a broad discretion to the Board to determine
9 procedure. And in the notice, as you have referenced,
10 Mr. Chair, the Board made clear in its notice, I want to
11 read the exact wording:

12 "That in an effort to maintain costs,
13 it is the Board's intent to assess this
14 application through a paper hearing
15 process, unless sufficient concerns are
16 expressed to warrant an oral hearing."

17 So that decision was communicated to the
18 public and the cost concerns were -- were noted, and of
19 course, because the costs are assessed to the applicant.
20 And, in this case, the applicant is seeking to operate --
21 initiate a relatively small business.

22 And essentially, as you know from the
23 application, its three (3) vans, which will be carrying
24 people to and from downtown locations and the airport in
25 Winnipeg, the James Richardson International Airport.

1 So it's a relatively small business and a
2 -- not so small to the applicant, but in terms of the
3 normal procedures, which this Board might see -- and so
4 cost concerns are certainly something the applicant has
5 asked to be considered in this process and repeats here.

6 There is one (1) party represented here by
7 Mr. Soronow; it's a combination of Unicity and Duffy's;
8 that, of course, has come forward initially and remains
9 opposed the application. As you noted, Mr. Chair, three
10 (3) other parties sent in, representations really,
11 presentations, letters.

12 But it is, I think, significant to note,
13 and Ms. Tataryn is certainly here to verify this, if
14 required under oath, that there was only one (1) party
15 that asked for a copy even of the application materials,
16 and that was Mr. Soronow's clients.

17 So the issue here really, is have
18 sufficient concerns come forward from the taxicab
19 companies to warrant the oral hearing, because there have
20 been no other concerns that have come forward, prior to
21 the public notice and after. Avion's position is no,
22 that there have not, and that the decision to go forward
23 with a paper hearing should continue.

24 The question raised for the Board is
25 whether the issues raised then by Unicity and Duffy's

1 would require an oral hearing to be fairly presented to -
2 - to the Board.

3 On that, the first point of Avion is to
4 look to the section, Section 163, and that section, at
5 Section 163 bracket 1, says:

6 "The City has exclusive authority to
7 operate local fixed-fare passenger
8 transportation services within the
9 City, except [and then at Sub B]
10 taxicabs are accepted."

11 So I only draw your attention to that
12 because when you get to 163 bracket 3, under which the
13 Public Utilities Board is brought in, it makes very clear
14 that despite Subsection 1:

15 "Where a person wishes to provide a
16 local transportation service that falls
17 under the exclusive authority of the
18 City under Subsection 1."

19 So section 163(3) draws us back to
20 Subsection 1. And what's before you is something that
21 has come under Section 163(1), which means it is not a
22 taxicab service, and in fact, that's the way jurisdiction
23 comes to you.

24 Now, there was a comment made at the
25 outset, and I didn't step in at that time, Mr. Chair,

1 when you mentioned the Taxicab's role -- Board's role in
2 this, and they of course administer the Taxicab Act. And
3 I think the Board had mentioned that -- that the Taxicab
4 Board sent it back to the City, or sent it to the City, I
5 believe the word was preferring that the City Council
6 deal with it.

7 In fact, by letter dated November 22,
8 2006, the Taxicab Board -- and this was attached to
9 Avion's submission to the Board, dated June 25, 2008. I
10 have copies but that -- but that is before the Board. I
11 certainly have a copy for My Friend. That was a letter
12 to the City of Winnipeg from the Secretary of the Taxicab
13 Board, saying the Taxicab Board is satisfied that this
14 agreement, that is the agreement that was being looked at
15 between the City and Avion, and service would not fall
16 within the jurisdiction of the Taxicab Act and
17 Regulations, therefore there's no objection with the
18 proposed service.

19 So the Taxicab Board has spoken. Avion
20 started there and was told we don't have jurisdiction.
21 And it's a simple matter to look up the definition of
22 taxicab in the Highway Traffic Act, which is then taken
23 into that Act and so on and so forth. Suffice it to say
24 they've long since determined they have no role in this.

25 So the first position of Avion is that the

1 issues raised by the party in opposition here, be
2 entirely related to impact on the taxicab industry, is
3 not a matter which falls within the mandate and the
4 direction under Section 163(3). That is the starting
5 position of Avion; is that those issues are not before
6 this Board as relevant matters in determining and dealing
7 with Section 163(3).

8 Having said that, in the alternative, Mr.
9 Chair, Members of the Board, Avion's position is that, in
10 fact, if we look at the issues that are raised in the --
11 the submissions, the written submissions of Mr. Soronow,
12 they are virtually identical. In -- in -- different
13 facts come in, but the same points are made as were made
14 by Mr. Gorlick on behalf of the taxicab industry, more
15 generally at City Council; that went through a -- an
16 extremely public process.

17 You mentioned five (5), I seem to remember
18 seven (7), but in any event, multiple hearings at City
19 Council, bounced back and forth between various
20 committees, included a full hearing, public hearing, in
21 front of the full City Council at -- at the final -- in
22 January of '07. So, point being, that these issues have
23 had a very public hearing on a repeatedly -- already in -
24 - in that form. As well, the issues that are put forward
25 by Mr. Sor -- Soronow are issues which -- the submission

1 of Avion would be the Board would not benefit from a --
2 an oral hearing.

3 Essentially, there are -- the issues
4 raised are as to speculative -- speculating as to what
5 impact this would have on the taxicab industry.
6 Inevitably, that's not going to be known, if there's any
7 impact, unless and until this business gets going.

8 And I certainly remind the Board, and I
9 know it's made clear in Section 163(3), that there is an
10 ongoing jurisdiction of this Board to oversee the
11 operation of the service. If the Board were to determine
12 that impact on the taxicab industry were -- were relevant
13 to its mandate, and of course that is not acknowledged,
14 but -- but if that were the decision, in fact as times
15 goes on, that's the only way any of this is going to be
16 known anyway.

17 The position of the -- the taxicab
18 companies -- and I -- I don't want to get into the
19 merits, but essentially is that it will be very
20 successful and therefore have a negative impact on cab
21 business, or it's very unneeded and therefore is likely
22 to fail. So they're entirely contradictory positions.
23 It's one (1) of the other; we don't really know.

24 What was interesting from Mr. Soronow's
25 submission earlier, which frankly Avion was not aware of,

1 is that some time in the past there had been a similar
2 service run by Unicity itself, which had failed. So I
3 don't know what the impact of that was. Clearly, it --
4 it failed, and I did have one (1) brief conversation with
5 the Board secretary on that. I -- I don't know if the
6 Board has any materials before it, or a prior application
7 in prior years. It was certainly not something that
8 Avion was aware of.

9 The point being, that in terms of oral
10 evidence or any need to have a hearing, if it's an issue,
11 the impact on the Taxicab Board, we just don't know
12 anything we're going to learn from oral submissions, as
13 to what is going to happen or not happen.

14 Lastly, this is not a case where there --
15 the -- the parties in opposition might not be able to put
16 forward their views or their positions in writing for
17 whatever reason, and that you would need an oral hearing
18 where they would come and -- and have the opportunity to
19 -- to present. In fact, you've got experienced and --
20 counsel acting, who have put in extensive written
21 submissions, detailed with many appendices, so there's
22 clearly no need to reach out, if you will.

23 The parties in opposition have dealt with
24 this seriously and professionally through counsel and it
25 -- it would be the submission of Avion that that

1 certainly would suffice to put the issues before the
2 Board. And of course, the Board has the power to make
3 requests for further information, as it has, and -- and
4 on its own initiate investigatory and -- and further
5 information from other parties.

6 So Avion's position remains that there has
7 been no coming forward of concerns in this process which
8 should lead the Board to alter its initial position,
9 which was that cost concerns mandate that the Board
10 should act as efficiently as possible and -- and do it by
11 way of a paper hearing. Those are the submissions of
12 Avion.

13 THE CHAIRPERSON: Thank you, Mr. Edwards.
14 Mr. Soronow...?

15
16 SUBMISSIONS BY MR. SIDNEY SORONOW:

17 MR. SIDNEY SORONOW: Thank you, Mr.
18 Chairman. At the outset, I feel obliged to say to the
19 Board that the submissions that I will make in relation
20 to the paper hearing issue are without prejudice to the
21 point of view that we continue to have, which is that
22 this Board has erred in its conclusion that it has
23 jurisdiction. And we reserve, of course, our entitlement
24 to have that matter determined in the Court of Queen's
25 Bench; a matter which I will of course discuss with my

1 clients following this hearing, or more probably
2 following the receipt of your written order or reasons
3 for decision.

4 That having been said, My Friend has
5 started from a proposition that the Board ought not to
6 vary from the track that it has gotten onto, which is
7 that this would be a paper hearing. However, my not
8 having been involved at the time, but my understanding is
9 that originally when this application was filed -- and
10 admittedly, they have held it moribund, and in abeyance,
11 for a couple of years -- but when the matter first
12 surfaced with the Public Utilities Board that the
13 intention of this Board, recognizing its mandate and
14 public interest that relate to the proceedings held by
15 the Public Utilities Board, that this matter would in
16 fact proceed as an oral hearing. That was the track it
17 was originally on. And so more recently it seems to have
18 adopted the potentiality of there being just a paper
19 hearing.

20 But my comment to this Board is that the
21 issues to be dealt with, and the public interest to be
22 considered by this Board, are no less important today
23 than they were when this Board intended to proceed as an
24 oral hearing. I don't see what has changed.

25 And I appreciate that Mr. Edwards, on

1 behalf of his client, has expressed a concern about the
2 cost associated with the oral hearing. Be that as it
3 may, that is not, nor should it be, the determining
4 factor as to whether or not a proceeding proceeds on the
5 footing of an oral hearing or a paper hearing.

6 My submission to you is that it is only
7 through an oral hearing that this Board has the
8 opportunity to flush out all relevant interests, public
9 interests, public concerns, individual concerns, party
10 concerns. This Board is particularly, amongst all the
11 boards and tribunals in this province, perhaps most
12 geared to and most familiar with dealing with matters
13 that are -- have a public concern and public interest
14 angle.

15 I couldn't quite follow part of My
16 Friend's submission, because he seemed at one (1) point
17 to, in effect, be arguing to narrow the inquiry, not --
18 not merely address the issue of whether the inquiry is on
19 a paper basis or whether it is on an oral basis, but the
20 character of the inquiry. And I have had the opportunity
21 to review the Board's prior correspondence and dealings
22 with this applicant, and the Board, I believe, has made
23 it clear and rightfully has made it clear, to the
24 applicant, that the mandate, which this Board considers
25 it has, in relation to this proceeding, is a broad one

1 that takes into account larger interests, interests of
2 the taxicab operators, the limousine operators, and so on
3 and so on.

4 In other words, that the Board is not
5 going to serve as a rubberstamp for Avion to have this
6 service. But the nature of the inquiry -- and I noted
7 letters going out from the Board asking for service
8 details -- in short, it's intended that this be a broad
9 hearing, taking into account many differing points of
10 view.

11 Without an oral hearing, I'm -- I'm having
12 a difficulty understanding how the Board would have the
13 ability to flush out all of those kinds of points of
14 view, you know, just on the surface.

15 The -- it's -- it's been explained in our
16 submission that the taxicab companies, their organization
17 is such that there are individual owners and operators of
18 taxicabs, and that, for example, in Unicity, as we
19 explained, the owners and operators of taxicabs each have
20 one (1) share in the ownership of Unicity Taxi.

21 Each taxicab owner -- and -- and I stop
22 there to clarify. In Unicity, about three-quarter (3/4)
23 -- three-quarters (3/4s) of their taxicabs -- I think it
24 is two hundred and twenty-five (225) taxicabs, about
25 three-quarters (3/4s) of them are owned by one (1) --

1 more than one (1) person, largely because the capital
2 cost associated with entering the industry is now over
3 two hundred (200), in fact, has hit as high as two
4 hundred and eighty thousand (280,000) for the acquisition
5 of a taxicab; so no small investment by either one (1) or
6 two (2) people.

7 And as I would indicate to you, because of
8 the way banks finance taxicabs, usually it takes a fair
9 amount of equity and a constrained amount of financing.
10 So most often these people have at risk their house.
11 Their family security is tied into the taxi industry.

12 The impact on the industry by this
13 decision can well be significant. In fact, you will have
14 had the opportunity to take a look at the total number of
15 -- and I'm not trying to get into the merits but I
16 necessarily, as did My Friend, have to draw upon them for
17 the purposes of addressing this issue of oral or paper
18 hearing.

19 And you will have observed from that, if
20 you had an opportunity to do so, that the projected
21 revenue, projected number of trips, passenger trips,
22 contemplated by Avion represents a significant amount or
23 percentage of the total business conducted by Unicity at
24 the airport.

25 And the tie-in, I mean, one might look

1 here and say, well, what is Duffy's Taxi doing here when
2 it's Unicity that has the contract at the airport? Well,
3 it's obvious, or should be obvious, that if, in fact,
4 they are able to achieve their projections, the business
5 crumbs left over for Unicity at the airport will be such
6 that they would have to change their business model and
7 they would have to divert resources from the airport to
8 the city in general, creating more cabs trying to service
9 the city rather than the airport.

10 Correspondingly, the revenue from every
11 taxicab and not just a -- sorry, not just Duffy's, but
12 there are other operators in Winnipeg of taxicabs who
13 would -- everybody's revenue per cab will go down. The
14 viability of the investment in the cab will go south on
15 them.

16 We have limousine operators. I mean,
17 there are many kinds of services in Winnipeg providing a
18 transportation. So I can understand someone like Avion
19 who would like to (a) restrict what you conduct as an
20 inquiry; and secondly, restrict how you conduct that
21 inquiry.

22 And they are speaking from their self
23 interest of having you approve their proposed service
24 when they suggest to you that you conduct this by way of
25 a paper hearing.

1 And I submit to you that the character of
2 function undertaken by this Board is one -- and I noted
3 in the correspondence from the Board to the applicant, a
4 focus on, you know, the public interest. What is the
5 public interest? What is in the public interest?

6 So as the -- and as the Chairman indicated
7 in opening remarks, there's still an opportunity for
8 people ultimately to be Intervenors in this proceeding
9 and I think that as more public awareness of this
10 proceeding, there may indeed be additional people. But I
11 don't know how you're going to have the opportunity to
12 get the full scope of appreciation of what's at stake in
13 this issue if it's confined only to a paper hearing where
14 the only people essentially who will be able to
15 contribute to that paper hearing are those who have the
16 immediate resources of legal counsel and the financial
17 wherewithal to pay for legal counsel.

18 I -- I submit that that is not in the
19 public interest. The public interest is best served when
20 there is as much opportunity for participation and/or
21 varying opinions that come forward through oral evidence,
22 oral participation by people who, if it's constrained to
23 a paper hearing, are likely not to have their views
24 heard.

25 And so I think it's befitting of a

1 proceeding of this character that it be an oral hearing.
2 That's giving this Board the widest opportunity, the
3 greatest opportunity to hear and appreciate, absorb,
4 analyse, and consider contrasting points of view.

5 So whether that's hotel operators, taxi
6 operators, limousine operators, people from the public, I
7 -- you know there's a myriad of people who at an oral
8 hearing may chose to seek participation.

9 So I think that this issue is important.
10 It affects transportation issues in the City of Winnipeg.
11 I'm mindful of the fact that most transportation issues
12 in the City of Winnipeg probably do funnel through the
13 Taxicab Board, but this Board now has legislatively a
14 role in this type of proceeding.

15 And I ask this Board not to set a
16 precedent that curbs public or other public interest
17 involvement, but rather expands and allows for that
18 interest. So I, with all the efforts that I can put into
19 it, encourage you to opt for an oral hearing. And those
20 are my submissions on that subject.

21 THE CHAIRPERSON: Thank you, sir.

22 Mr. Edwards, do you have anything to add?

23

24 REPLY BY MR. PAUL EDWARDS:

25 MR. PAUL EDWARDS: Two (2) -- two (2)

1 quick points. One (1), My Friend indicates, of course,
2 that Avion is seeking to maintain this as a paper
3 hearing.

4 Mr. Soronow, can I just get you to --

5 MR. SIDNEY SORONOW: Sorry.

6

7 CONTINUED BY MR. PAUL EDWARDS:

8 MR. PAUL EDWARDS: Yeah. We -- out of
9 self interest, certainly that's acknowledged, and the
10 Avion would only suggest as is the -- the self interest
11 of the -- the opponents the shareholders or owners
12 involved in Unicity and Duffy's.

13 So the only public interest comments that
14 the Board has received are the three (3) letters from the
15 organizations who do not have a direct interest but at
16 least come forward on behalf of their -- their -- the
17 concerns of their organizations.

18 The only other comment I would make is
19 that really this was publicized. I mean, to -- to
20 suggest that the Board hasn't done everything possible to
21 encourage public interest and -- and participation, I
22 mean, this was -- had a lot of notoriety, as the Board
23 will note, when it was going through City council, very
24 well known.

25 It came to this Board, advertisements put

1 out, clearly an effort by the Board already to invite any
2 comments. And really none of those parties, that My
3 Friend indicates, have sent anything into the Board or
4 asked for the application.

5 So in terms of needing to open this up
6 further for other parties, again more notoriety, Avion
7 would simply say that much has been done. It is a
8 balancing between making sure that things like this
9 aren't killed at the outset because of the costs and the
10 duration, balancing that against the very long, long
11 record of this Board in being very open to the public.

12 And that has been done here. And really
13 what you have before you are the -- is the one (1)
14 interest put forward by Mr. Soronow's clients. And so
15 Avion would simply say that is the fact months after the
16 public notice has gone out.

17 And I'll end my comments there. Thank
18 you, Mr. Chair.

19

20 REPLY BY MR. SIDNEY SORONOW:

21 MR. SIDNEY SORONOW: If I might -- if you
22 don't have an oral hearing, however, you will never have
23 the face of the opposition, people who oppose this. You
24 won't have a chance to hear from them, you won't have a
25 chance to get the flavour for their concern for the

1 impact on them. That's why I believe you need an oral
2 hearing.

3 THE CHAIRPERSON: Thank you. I am afraid
4 I am going to have to ask the parties to display a little
5 bit more patience with us. I want to consult with my
6 panel mates for a few minutes and then we will come back.
7 Thank you.

8

9 --- Upon recessing at 11:49 a.m.

10 --- Upon resuming at 11:57 a.m.

11

12 BOARD DECISION ON MEDIUM OF HEARING:

13 THE CHAIRPERSON: Okay. Our general
14 mandate is, and on the proceedings that we become
15 involved with, is to determine the public interest.

16 After reflection, reading the material
17 that was submitted ahead of this pre-hearing conference
18 and hearing the submissions today, our conclusion is, is
19 the best interests of the public would best be served by
20 an oral hearing.

21 That said, we are concerned with costs,
22 that is one (1) of the things we balance, and we will
23 leave it to the best efforts of the parties to as best as
24 possible avoid duplication or repetition of effort.

25 What we are going to do in this case,

1 since we have not considered a timetable at any depth to
2 this point, is we will leave it to Board counsel to
3 consult with the other parties and to arrive at an
4 agreeable schedule. And at that point in time it will be
5 contained within our order that will come out of this
6 hearing.

7 Mr. Saranchuk, perhaps you could put some
8 more meat on those bones.

9 MR. WALTER SARANCHUK: Thank you, Mr.
10 Chairman.

11 Very briefly, the timetable will involve
12 procedure whereby there is to be an exchange of
13 information requests or interrogatories by the Public
14 Utilities Board, in other words, questions of the
15 parties, namely Avion and Unicity and Duffy's Taxi. At
16 the same time then, of course, there will be provision
17 for a certain time frame within which the replies are to
18 be provided.

19 There will also be provision for exchange
20 of interrogatories, information requests, of Unicity and
21 Duffy's by Avion, if it is so inclined, with a time frame
22 there, as well, for responses. And then there will be
23 provision for exchange of interrogatories by Unicity and
24 Duffy's of Avion, with a time frame there, as well, for
25 replies.

1 There is also to be provision for any
2 rebuttal to be given by the parties involved, as well as
3 a provision for any motions or anything like that that
4 might arise out of the information request procedure.

5 And then of course there will be a
6 provision necessary for the public hearing and some
7 discussion will have to ensue as to just how long that
8 shall be, but obviously taking into account the Board's
9 guidance in terms of availability of personnel, in terms
10 of costs involved in having these hearings, and hopefully
11 in the interests of all concerned an agreement by all
12 concerned that there will be time constraints recognized
13 and costs factors recognized whereby we won't have, for
14 example, a number of witnesses paraded into a hearing
15 virtually all saying the same thing.

16 So those are kind of -- that's just by way
17 of an example. So those are some of the guidelines and,
18 as you indicated, Mr. Chairman, Board counsel will be in
19 touch with counsel for Avion and for Unicity and Duffy's
20 to arrange for a convenient but also an appropriate
21 schedule or timetable. And this will all be done in
22 consultation with Mr. Gaudreau from the Board, because
23 obviously we have to take into account the availability
24 of the panellists. And so essentially, that's the
25 situation. It takes us out, I think, a few months at

1 least. Those are my comments.

2 THE CHAIRPERSON: Thank you, Mr.
3 Saranchuk. We appreciate the participation and the
4 cooperation of the parties today and we stand adjourned.

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6 --- Upon adjourning at 12:01 p.m.

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9 Certified correct,

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Cheryl Lavigne, Ms.

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