



“When You Talk - We Listen!”



MANITOBA PUBLIC UTILITIES BOARD

Re: MANITOBA PUBLIC INSURANCE COMPANY
MOTION TO COMPEL ANSWERS TO
INTERVENOR REQUESTS

Before Board Panel:

- Karen Botting - Board Chairman
- Regis Gosselin - Board Member
- Anita Neville - Board Member
- Susan Proven - Board Member
- Allan Morin - Board Member

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
August 22, 2014
Pages 1 to 195

1 APPEARANCES

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3

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1 --- Upon commencing at 8:59 a.m.

2

3 THE CHAIRPERSON: Good morning, ladies
4 and gentlemen. I'm Karen Botting, vice Chair of the
5 Public Utilities Board and the Chair of the panel
6 considering the MPI General Rate Application. Joining
7 me today is Board Chairman Regis Gosselin on my far
8 left, Board members Anita Neville on my immediate left,
9 Al Morin on my right, and on my far right, Susan
10 Proven.

11 The Board has convened today for the
12 hearing of three (3) motions filed by each of CAC,
13 CMMG, and ARM relative to the First Round of
14 Information Requests served upon MPI. In particular,
15 CAC, CMMG, and ARM have filed motions to compel MPI to
16 provide answers to certain questions posed in the First
17 Round of Information Requests which MPI did not answer.

18 The Board has received a written
19 submission from MPI in response to the motions filed
20 datus -- dated August 18th, 2014. For the purposes of
21 the hearing today, we will call upon each of the moving
22 parties in the following order: Mr. Byron Williams for
23 CAC, Mr. Raymond Oakes for CCMG, and Mr. Irvin Frost
24 for ARM.

25 We will then call upon the other

1 Intervenor to the proceeding for comments on the
2 motions filed in the following order and to the extent
3 that these Intervenor are present today: Ms. Angele
4 Young for CAA, Mr. David Schioler, I'm not sure he's
5 here, for IBAM, and Mr. Chris Monnin for Bike Winnipeg.

6 We will then call upon Ms. Kalinowsky on
7 behalf of MPI to provide its responding remarks to the
8 motions. Lastly, we will ask each of the Intervenor
9 for any reply that they may have to MPI's comments.

10 After hearing all the submissions and
11 asking any questions that it may have, the Board panel
12 will sequester itself for the purposes of deciding the
13 motions. Given the time-sensitive nature of the
14 issues, the Board is hopeful that its order flowing
15 from the motions will issue during the week of August
16 25th, 2014.

17 Before calling upon Mr. Williams for his
18 submissions, I will ask Board counsel, Ms. Grammond,
19 whether there are any preliminary matters that need to
20 be addressed.

21 MS. CANDACE GRAMMOND: Thank you, Madam
22 Chair. The only preliminary matter that I wish to put
23 on the record is this: I had a discussion with Mr.
24 Williams and Ms. Kalinowsky prior to the proceeding
25 today, and we've agreed that we are going to enter as

1 exhibits the written submissions put forward by CAC,
2 noting that obviously the content of the submissions
3 are not evidence. They are submissions and
4 authorities. But for tracking purposes and purposes of
5 the record, it's the easiest way to proceed.

6 So, having said that, I have no further
7 preliminary matters.

8 THE CHAIRPERSON: Okay. Thank you.
9 Then I will call upon Mr. Byron Williams to speak for
10 CAC.

11

12 SUBMISSIONS BY CAC (MANITOBA):

13 MR. BYRON WILLIAMS: Thank you, Madam
14 Chair, and good morning to the members of the panel. I
15 should introduce my colleague, Ms. Menzies, sitting to
16 my left. As well, in the back row, by -- by Diana,
17 you'll see Ms. Lori Baldwin from CAC (Manitoba), as
18 well as Mr. Will Steinburg, who's an arti -- student --
19 articling student-at-law at our firm. I'll note that
20 Ms. Desorcy sends her regrets, as she is not in
21 Winnipeg today.

22 Just as one (1) preliminary matter,
23 sadly, we've killed more than one (1) tree in -- in
24 this proceeding. We've already, I believe, marked as
25 exhibits the -- the prefiled material of CAC

1 (Manitoba). But I'm hoping that we'll -- we'll work
2 off the PowerPoint, but I'm certainly hoping that the
3 panel may have before it the CAC references which were
4 provided two (2) days ago. It's a -- a rather thick
5 document.

6 As well, we do have a -- for the benefit
7 of the panel, if you wish to make handwritten notes, a
8 written outline of our PowerPoint. And at the request
9 of counsel for the Public Utilities Board, there should
10 be an additional document which we've called the
11 contested IRs of CAC (Manitoba). It's a lengthy sheet.

12 And so for the purposes of the record, I
13 would suggest that the CAC references be marked as CAC
14 Exhibit 4, that the PowerPoint be marked as CAC Exhibit
15 5, and that the contested IRs spreadsheet be marked as
16 CAC Exhibit 6.

17

18 --- EXHIBIT NO. CAC-4: CAC References

19

20 --- EXHIBIT NO. CAC-5: CAC PowerPoint

21

22 --- EXHIBIT NO. CAC-6: Contested IRs spreadsheet

23

24 MR. BYRON WILLIAMS: Towards the very
25 end of my submission, we do have an amended schedule.

1 Our original proposal for the schedule had the IRs
2 being responded to by today, and I think that's highly
3 unlikely. So we've moved everything back a couple of
4 weeks. So that, we'll distribute, with the panel's
5 permission, towards the end of my submissions.

6 THE CHAIRPERSON: Thank you, Mr.
7 Williams.

8

9 (BRIEF PAUSE)

10

11 MR. BYRON WILLIAMS: And certainly our
12 client appreciates the opportunity to appear here
13 today. I'll go into this in detail towards the very
14 end of our submission, but in terms of the order that
15 our client is seeking from this panel, certainly we're
16 seeking direction from the panel to MPI to provide a
17 full and adequate response to the Information Requests
18 posed.

19 We are seeking a determination that the
20 initial response of MPI was not in compliance with the
21 Board's rules. We are seeking an amended schedule, and
22 we're also seeking direction as to costs from this
23 panel. So those will be the relief that we're seeking.
24 And I'll elaborate upon those a bit later today.

25 I do want to turn to really -- just by

1 way of brief overview, this panel over the years, and
2 certainly the Hydro and Centra panels, have heard many
3 motions for disclosure. That's not unique. But from
4 our client's per -- perspective, this is probably the
5 most important motion that has been argued before this
6 Board over the last twenty (20) years.

7 From our client's position, a critical
8 question raised by this motion and by MPI's response to
9 it is whether the PUB can fully fulfil its role of
10 protecting vulnerable ratepayers, the ratepayers of the
11 Basic in --

12 We've used here on our PowerPoint:

13 "The MPI argument strikes at the
14 heart of an essential regulatory
15 role."

16 Those words, 'at the heart', are not my
17 words. You'll see -- later today you'll see reference
18 from the learned text, Goodman, that says -- talks
19 about the computation of costs being at the very heart
20 of the regulatory role. Our client's concern, and it's
21 a fundamental concern, is that the position taken by
22 MPI undermines that regulatory role and is inconsistent
23 with one hundred (100) years -- at least one hundred
24 (100) years of regulatory precedent.

25 And some members of this panel will be

1 well familiar with Bonbright, one of the most well-
2 known articulations of regulatory principles that are
3 out there. And for the purposes of this quote on the
4 first page, or being page 3 of the PowerPoint, I went
5 to the first edition of Bonbright just to get a sense
6 of how historic this principle is.

7 So here's Bonbright, probably the
8 leading authority, saying, Well, what kind of standard
9 of reasonable rates should we be applying? And what he
10 says is that:

11 "There's one (1) standard that can be
12 said to outrank all others in the
13 importance attached to it by experts,
14 and by public opinion alike. The
15 standard of cost of service often
16 qualified by the stipulations that
17 the relevant cost is necessary cost
18 or cost reasonably or prudently
19 incurred."

20 That's the standard with the widest
21 range of application. And from our client's
22 perspective, that's the crux of this matter. That's
23 the issue and -- and the -- that MPI takes issue --
24 takes umbrage with, and that is really the key point
25 that we want to get -- get across.

1 Now, some have said that maybe that cost
2 standard only applies to private sector utilities.
3 That certainly has not been the practice in Manitoba.
4 And look what Bonbright says about that, the second
5 bullet on this page:

6 "A cost standard of rate-making has
7 been most generally accepted in the
8 regulation of the levels of rates
9 charged by private utility companies.
10 But even more significant is the wide
11 spread adherence to cost, or some
12 approximation of cost, as a basis of
13 rate-making under public ownership."

14 So these are the core values, the core
15 principles, the things that the Public Utilities Board
16 has done with regard to the regulation of Crown
17 utilities for -- since -- since it took over that
18 jurisdiction. We think it's a good practice, a
19 necessary practice, and we think that's what's at issue
20 in this hearing.

21 I've got a comment or a bullet on the
22 end of this page talking about inadvertent red
23 herrings. We certainly expect that when it comes to
24 MPI's response, you'll -- you'll see, no doubt
25 inadvertently, a fair bit of obfuscating noise

1 suggesting that CAC (Manitoba) is asking you to usurp
2 the legitimate management roles of Manitoba Public
3 Insurance, or that CAC (Manitoba) is asking you to
4 register non-approval for capital expenditures.

5 That's not the case. Those claims by
6 MPI are simply red herrings. CAC (Manitoba) is simply
7 asking this Board to do what it has always done, and
8 what may -- it is obliged to do under the Crown
9 Corporation's Public Review and Accountability Act, and
10 under the Public Utilities Board Act: to approve rates
11 that are just and reasonable.

12 In the argument that follows, I'm going
13 to spend a lot of time on principle and key legal
14 principles. I'm not going to get a lot into the
15 specifics of the Information Requests, and I do so that
16 learnedly because I think as long as we're confident in
17 the major principles they roll out quite -- quite
18 easily into your determination of whether the
19 Information Requests of CAC (Manitoba) are relevant and
20 necessary for your det -- determinations here. We will
21 submit that -- that they are.

22 And certainly it'll -- it will be our
23 perspective that once you -- once everyone in this room
24 is aware of the fundamental flaw of Manitoba Public
25 Insurance in looking at these issues, the answer to the

1 motion to compel will flow fairly easily.

2 I perhaps am sounding a bit
3 argumentative. I will be this morning. But I do want
4 to talk about three (3) points where I believe CAC
5 (Manitoba) and Manitoba Public Ins -- Insurance are in
6 agreement. One (1) is a general statutory principle
7 that statutes, whether it's the Crown Corporation Act
8 or the PUB Act or the MPI Act, are to be read as a
9 whole. They're to be read harmoniously. And certainly
10 that's -- that will be the approach we will take.

11 There also is an -- an important point
12 that we are confident we are in agreement with Manitoba
13 Public Insurance in, is that you have expertise in
14 rate-setting. And that is set out here in a -- in --
15 on page 4, the second bullet, a quote from the Court of
16 Appeal, Mr. Justice Monnin, in chambers, noting that:

17 "The setting of rates and the
18 elements that are to be considered in
19 doing so require a specialized
20 knowledge that ought not to be
21 interfered with unless there's clear
22 error."

23 And that's the PUB. And that's what
24 this whole hearing is about, in our client's
25 submission. We're saying that you have to set just and

1 reasonable rates and that in doing so you have to
2 consider whether costs are prudently and necessarily
3 incurred. MPI disagrees, and that is where your
4 expertise comes in. The ple -- PUB has been doing this
5 for many decades. It's been regulating rate
6 applications of Crown corporations for over two (2)
7 decades, and that's where your core expertise lies.

8 And we al -- our client is also of the
9 view that there's no disagreement in terms of your
10 powers. If you consider the Information Requests of
11 CAC to be relevant, there is no doubt that you have the
12 jurisdiction to compel disclosure, and that
13 jurisdiction comes from Section 24 and 27 of the Public
14 Utilities Board Act and it comes from Rule 12 of your
15 Rules of Procedure.

16 I'm not going to talk a lot about the
17 MPI Act, but the simple point is we do ha -- it is kind
18 of unique in the sense that Cabinet prescribes the
19 rates, but only after the PUB approval. The central
20 point there is the PUB approval, and I -- I think
21 that's fairly obvious. Diana, I'm going to ask you to
22 -- to take over for a second and turn to page 6 of the
23 CAC references, which is Exhibit 4.

24 So let's turn to the Crown Corporations
25 Public Review and Accountability Act, 26(1). Here's

1 the approval power of the Public Utilities Board. And
2 what is it? It is the Public Utilities Board
3 exercising that approval power under the Public
4 Utilities Board Act. And we're going to come to the
5 Act in a moment, but the guidance the Board should
6 have, and in our client's submission, flows from the
7 Public Utilities Board Act in terms of the legal
8 standard, which is a just and reasonable rate.

9 Section 26(2)(c), we all know that what
10 we're regulating here, what the Board approval function
11 relates to, is Basic automobile insurance.

12 If we could just go up to 26(3) for a
13 moment, Diana, and thank you. We see as well here,
14 again, reinforcement that the Public Utilities Board
15 Act applies with any necessary change -- changes. In a
16 few moments, actually, in -- in about twenty (20)
17 minutes, I will come back to Section 26(4), but I want
18 to turn to the Public Utilities Board Act for a -- for
19 a few moments. And if -- Diana, if you could stand
20 down and we'll pull up reference to the PUB Act. The
21 next page.

22 There's two (2) key messages that our
23 client wishes to convey with regards to the Public
24 Utilities Board Act. The first is just that power to
25 compel disclosure I've put in Sections 24 and -- and

1 27. The more important one (1) from our client's
2 perspective, because this is in our view what's --
3 needs to be determined and what is in dispute, is this
4 is the legal standard that the Public Utilities Board
5 applies when it's fixing or apro -- app -- approving
6 rates. That flows from Section 77 of the axe -- of the
7 Act -- hopefully it's not an axe -- and we've bolded
8 some important language here:

9 "The Board may, by order, in writing,
10 after notice to or hearing of the
11 parties interested, fix just and
12 reasonable rates for the owner of a
13 public utility."

14 That's the core mandate. That is also
15 the core legal standard that the Board is -- is
16 compelled to apply. And I should note that -- that
17 these are not words unique to Manitoba. These are not
18 words unique to Canada. This concept, the concept of
19 just and reasonable rates goes back over a hundred
20 thirty (130) years. Georgia, I think, in the 1870s was
21 the first example. It flowered in the populous
22 movement in the United States in the early 1900s and
23 was -- has been considered time after time by Canadian
24 and American courts. It's a universal standard with
25 key universal criteria.

1 So the Crown Cor -- we can turn to the
2 next page. The Crown Corporations Act does say --
3 actually, flip back for a second. The Crown
4 Corporation Act does say that the PUB Act applies with
5 necessary changes.

6 So if we look at (a) of Section 77, here
7 it says, "Fix just and reasonable rates." Well, really
8 the Board's function here is to approve just and
9 reasonable rates. So if you're making a mental note to
10 yourself, I would strike out the word 'fix'. It also
11 says, "For the owner of a public utility."

12 Well, under the words of the Public
13 Utilities Board Act, Manitoba Public Insurance is not a
14 public utility. The Board's approval rate -- approval
15 authority extends only to basic automo -- automobile
16 insurance.

17 So here -- here's how we would interpret
18 section 77 with the necessary change -- changes.
19 What's the role of the Public Utility Board? Approving
20 just and reasonable rates. And the third bullet says
21 for MPI, but it really should -- should say for Basic
22 in terms of MPI.

23

24

(BRIEF PAUSE)

25

1 MR. BYRON WILLIAMS: Now, in fairness,
2 MPI never complai -- claims that the Board is not
3 allowed to -- to apply the standard of just and
4 reasonable rates. How could it? Because, obviously,
5 that's been the standard for -- for over a hundred
6 years and it's well established in legal precedent.
7 But it does make, in our client's submission, a radical
8 claim.

9 That radical claim is that:

10 "The Public Utilities Board erred in
11 indicating that its role is to ensure
12 actual and prudent projected costs
13 incurred are necessary and prudent."

14 And you can see that surprising
15 statement in -- in the motion brief of Manitoba Public
16 Insurance. And then if you go some of the responses to
17 Information Requests, we drew up PUB I-75.

18 "The role of the PUB is not to
19 determine if these costs are just and
20 reasonable."

21 So that allegation that the Board
22 doesn't have a supervisory role in -- in the rate-
23 setting context in terms of analyzing the
24 appropriateness of costs, our clients say is radical,
25 it's plain wrong, and -- and it's inconsistent with the

1 well-established practices of the PUB and judicial
2 consideration of these practices. It's inconsistent
3 with the well-established practices of other Canadian
4 regulators. It's inconsistent with well-established
5 regulatory principle. It's inconsistent with over one
6 hundred (100) years of jurisprudence. And it's
7 inconsistent with the language of the Crown
8 Corporations Public Review and Accountability Act.

9 And we characterize this statement is --
10 of Manitoba Public Insurance as highly unusual, and we
11 mean it. You are not going to find many allegations
12 like this across Canada. We consider it a highly
13 unusual claim by Manitoba Public Insurance.

14 So I want to go through those bullets.
15 I want to start with this 'Board's well-established
16 precedent'. And remember you're the experts. The
17 Public Utilities Board has been looking at the issue of
18 just and reasonable rates for many years.

19 So what does the Public Utilities Board
20 tell us this task in -- involves? And this is drawn
21 directly from a Hydro order, Board Order 5/'12. And
22 it's in our book of references, but we don't need to go
23 there right now.

24 What's the role of the Public Utilities
25 Board in setting just and reasonable rates? Ensuring

1 forecasts are reasonably re -- reliable.

2 Secondly, the key bullet, ensuring that
3 actual and projected costs incurred are necessary and
4 prudent. Third, assessing the reasonable revenue
5 needs of the Corporation, in this case, Basic, in the
6 context of the overall health of the Corporation.

7 Fourth, determining an appropriate
8 allocation of costs between classes and setting just
9 and reasonable rates in accordance with the statutory
10 objective. Well-established precedent of the Public
11 Utilities Board go back to the decisions of Mr. Forest
12 (phonetic) in the 1990s. You'll see a lot of dialogue
13 in terms of cost and making sure that MPI is operating
14 itself efficiently and in the public interest.

15 What does MPI say about these five (5)
16 principles?

17 "MPI agrees with all points but one
18 (1). MPI respectfully considers the
19 PUB erred in indicating its role is
20 to ensure actual and projected costs
21 incurred are necessary and prudent."

22 Now, from this statement, and we'll stay
23 on this page for a minute, it's clear that MPI accepts
24 that the Board's role is to set just and reasonable
25 rates. Flip back to the page previous for a second.

1 That -- that is the fifth principle there. Onto the
2 next page.

3 Once you accept that the Board's role is
4 to accept -- is to approve just and reasonable rates,
5 you can't deny that the -- the Board's role is also to
6 ensure that actual and projected costs are necessary
7 and prudent. Conceding that this is about just and
8 reasonable rates is a legitimate concession, but it's a
9 fatal one.

10 The aspects of the Board's
11 determination, in terms of just and reasonable rates,
12 have been carefully considered by regulators and by
13 courts for many dec -- decades. And we'll demonstrate,
14 hopefully to the Board's satisfaction, that central to
15 this legal term of art, just and reasonable rates, is
16 an understanding that consideration of cost is an
17 essential element of rate-making. To deny this
18 regulator the power of cost review for rate approval
19 purposes would be to effectively neuter this regulator.
20 It would be to create a regulatory rubber stamp.

21 If we look -- continue on with the well-
22 established precedents of the Public Utilities Board,
23 another one is, and very closely related, is to look at
24 efficiency. That's a legitimate public policy
25 objective, as -- as identified in Section 26(4) of the

1 Crown Corporations Act. It's central to what
2 regulators do.

3 And we pulled precedent from Board Order
4 15 -- 151/'13 just to show that this is a typical
5 exercise that the Board does. On the bullet on page 13
6 of Exhibit 5, you see the Board talking about the need
7 to control oper -- operating expenses and staffing let
8 -- letters, directing MPI to review its efficiencies.
9 We can go onto the -- the next page and see, as well,
10 references to file a benchmarking framework for rate-
11 setting purposes, and also to optimize road safety
12 expenditures, a legitimate efficiency exercise of this
13 Board.

14 Now, I want to stay on this page for a
15 minute because this is almost where the red herring
16 comes in. The Board's focus on prudence and -- and
17 necessity, the Board's focus on efficiency, is not an
18 attempt to usurp the management function of Manitoba
19 Public Insurance. That's for MPI to run its business.

20 But when MPI, in seeking rate changes
21 for its monopoly, comes to the Public Utilities Board,
22 it is up to this Board in that context in approving
23 rate-setting to ask itself a core question of rate-
24 setting: Are these costs prudent and necessary? The
25 PUB is not only entitled to ask these questions; it's

1 obliged to because that's a core element of just and
2 reasonable rates.

3 The PUB cannot tell MPI how to spend its
4 money. But it can, when MPI comes before it, if it's
5 not satisfied that MPI is operating in a prudent and
6 efficient manner, it can say, We're not going to give
7 you all you're asking for.

8 And just for a hypothetical example, if
9 there were exorbitant salary increases and MPI comes
10 forward and says, Approve these salary increases as
11 part of the overall rate, the Board does not have to do
12 that. It is entitled to ask itself, Are those salaries
13 in accordance with industry norms? Because the Board's
14 job, one (1) of its key jobs, is to protect vulnerable
15 ratepayers of the monopoly.

16 Just to finish the point, MPI makes
17 management decisions, the PUB makes rate-setting
18 approval decisions, but in a -- in -- in looking at
19 those rate-setting approval decisions, that the Board's
20 mandate can be to look at -- at the necessity of
21 expenditures.

22 We wanted to -- and I have to say that
23 when our client observed on August 18th that MPI was
24 saying that this was beyond the jurisdiction of the
25 Board, our client did express some shock, and we just

1 wanted this idea that the review of costs is so central
2 to the Board's function. It's -- it's so accepted.
3 And -- and I just want to pull a few excerpts for you
4 from recent decisions of the Court of Appeal. Here's
5 the -- Mr. Justice Monnin talking in chambers in CAC v.
6 Manitoba Hydro:

7 "The intent of the legislation is to
8 prove fair rates, taking into account
9 such considerations as cost and
10 policy or otherwise as the PUB deems
11 appropriate."

12 Two (2) important things there: it's
13 appropriate to look at costs, and the PUB has the
14 discretion to look at costs. I would go farther and
15 they -- say they have an obligation to look at costs.

16 And then the second bullet:

17 "The role of the PUB under the
18 Accountability Act is not only to
19 protect consumers from unreasonable
20 charges, but also to ensure the
21 fiscal health of Hydro."

22 Same decision in adjoining paragraphs.
23 So there you see a cle -- clear link between costs and
24 unreasonable charges, and clearly, a central aspect of
25 determining whether charges are unreasonable is looking

1 at the reasonableness of the costs claims.

2 We see a similar reference or similar
3 acceptance in -- in -- from the Court of Appeal in a --
4 a recent leave decision of Mr. Justice Freedman. The
5 Board -- he -- what he's saying here, and he's giving a
6 warning to the Board, is that, You may be go -- making
7 an order essentially affecting a non-Basic line of
8 business.

9 But look at how Mr. Justice Freedman
10 understands the ordinary role of the Board:

11 "Reviewing and approving (or
12 disapproving) Basic rates and costs."

13 Now, I might word it in a manner that I
14 think is a little more elegant than Mr. Justice
15 Freedman, but he is the judge. He gets to do that, and
16 -- and -- but there -- just as a matter of course, the
17 Board's role: looking at rates and costs. And how
18 could it be otherwise when we're talking about monopoly
19 consumers?

20 So perhaps, lest you fear that the PUB
21 is on an island, that you're the only ones doing this
22 thing, our clients sought to give you some comfort, and
23 looking at some of your sister regulators. In
24 particular, we chose Ontario because there they
25 regulate a number of transmission mun -- munic --

1 utilities, including municipally-owned ones, and we
2 chose BC because they regulate BC Hydro.

3 And I've put the materials in -- in the
4 -- in the book of references, but here's a couple of
5 comments from the OEB, noting that one (1) of its
6 principal functions is to set just and reasonable
7 rates.

8 Well, how does it do that? It does it
9 as you turn to the second bullet, by undertaking a
10 comprehensive review of the utility's costs as detailed
11 in the rate application, just as a matter of course,
12 the central element of rate -- rate making.

13 And we can see this as well with -- with
14 British Columbia. And, Diana, I didn't give you notice
15 of this, but I wonder if you can turn to page 48 of the
16 book of references? Scroll up to -- to Section 59.

17 This is an excerpt from the utilities
18 legislation from British Columbia. Here you see that
19 the Board's role -- it's worded a little bit
20 differently, but it's very similar. They're to make
21 sure that rates are not unjust and unreasonable.

22 And if you scroll to the next page --
23 keep -- keep going down, Diana, to Section 60 -- you'll
24 see its role is a rate-setting exercise and to ensure
25 that rates are not unjust or unreasonable. So there's

1 the BC Utilities Commission exercising its role.

2 And if we could turn in this document to
3 page 57 now, Diana? On the left-hand side under
4 'Electric' in Table 2.1, you'll see that one (1) of the
5 utilities that it represents is a Crown corporation, BC
6 Hydro and Power Authority.

7 And turning to page 60 of this document,
8 under 'Rate Regulation' -- perfect, right there ---
9 you'll see this is what -- what they look at. These
10 are the costs that they look at. The costs to build,
11 operate and maintain, finance debt. Sounding a lot
12 like Section 26(4) of the Crown Corporation Public
13 Review and Accountability Act. And if we could just
14 scroll down to the -- a bit lower on the page, the
15 circled?

16 What can the Commission do?

17 "If the Commission decides that any
18 of the costs claimed by the utility
19 are not reasonable or prudent, it may
20 disallow the recovery of those costs
21 in customer rates."

22 Very analogous to what the Board here
23 has historically done. We would word it, again, a
24 little bit differently in the sense that we would say
25 you would not approve the recommended rate of the

1 Corporation, you would amend it somewhat, but there you
2 see the test that the British Columbia Utilities
3 Commission is applying, not reasonable, not prudent. A
4 very legitimate exercise of its function, indeed a
5 universal exercise of function of -- of utility
6 regulators.

7 Diana, if we can turn to page 66 of this
8 document? Thank you. We pulled the reference from,
9 also, a decision from the Alberta Utilities Commission,
10 and if we could scroll down a bit towards the bottom?
11 Keep scrolling, please. Thank you. This is a
12 reference from the Alberta Utilities Commission. And
13 we -- we flagged this one, because one (1) of the big
14 criticisms of MPI of the PUB practice is MPI says you
15 can't set benchmarks.

16 And because it -- it's set out elsewhere
17 in the Crown Corporation Review and Accountability Act,
18 but here we just want to make the point that looking at
19 benchmarks, it's not a management function in the rate-
20 setting context. It's a simple rate-setting function.
21 It's to get a context for whether the costs claimed by
22 the Corporation are reasonable in comparison to
23 analogous entities.

24 And so here you'll see what the Alberta
25 Utilities Commission is saying about, these are some of

1 the questions you can look at when you're looking at
2 just and reasonable rates. The Board must ensure that
3 this onus is met, particularly if there are project
4 conco -- components that have large differences between
5 forecasts and actual costs, appear to be relatively --
6 or appear to be high relative to the industry norms, or
7 involve affiliate transactions, and it's the high
8 relative to industry norms that I wish to -- to focus
9 on.

10 We can go -- thank you, Diana. Next
11 page, please. So here's the quote by Manitoba Public
12 Insurance. The Act doesn't grant any specific powers
13 to the PUB to assess benchmark -- marking, and our
14 client says it doesn't need to, because in the
15 legitimate exercise of its rate-setting function, in
16 determining whether costs are reasonable and prudent,
17 is open to the Board as one (1) of the tools of rate
18 setting to look at comparisons. And in a couple
19 moments, we'll come to one (1) of the most famous cases
20 in this regard, an old railway case from 1911 which --
21 which assists with this very proposition.

22

23 (BRIEF PAUSE)

24

25 MR. BYRON WILLIAMS: So again, just to

1 go back to the heart of the issue, this Board, and
2 certainly CAC agrees with the Board, says that prudence
3 and necessity is central to rate approval. 'M' -- MPI
4 claims it's not, especially for a Crown corporation.
5 Here are these same quotes from Bonbright, which I -- I
6 dro - drew to your attention originally, making the
7 point that this is the preeminent criteria in
8 determining just and reasonable rates, and that this
9 concept is entirely appropriate for Crown corporations.

10 Here we have Goodman. That -- the
11 previous page was Bonbright from 1961. Here's Goodman,
12 a learned arder -- author from 1998:

13 "What's at the heart of a regulatory
14 agency's administration of the just
15 and reasonable standard? Computation
16 and the allocation of costs."

17 And, Diana, if we can turn to page 78?
18 Scroll up, please.

19

20 (BRIEF PAUSE)

21

22 MR. BYRON WILLIAMS: Scroll up, please.
23 Here you have Goodman. This is an excerpt from
24 Goodman. I think this is Volume II. Again, he's
25 talking about efficiency in the public interest, and we

1 brought it to your attention because it's very similar
2 to the language that the Board uses in Board Orders
3 5/'12 and 151/'13.

4 And if we can scroll to the next page?
5 Here it is. Stop right there. Here again is the
6 response to MPI on benchmarking. An essential element
7 of rate setting, not since time immemorial, but this
8 case here is from 1911, is a comparative analysis of
9 operating costs, and here you can see the regulator in
10 question comparing the operating costs of two (2) --
11 actually, a number of railway companies.

12 So our simple point is the Board doesn't
13 need express authority to do benchmarking because it's
14 expre -- it's implicit in the rate-making authority.
15 It's just another tool of the trade.

16 And if we could scroll down? Actually,
17 Diana, that's good for right now. And we'll go back to
18 -- to the PowerPoint.

19 So there's the quo -- quote from
20 Goodman. I thought I'd pull one (1) from the insurance
21 industry, as well. Again, this is drawn from -- from
22 Goodman.

23 "A rate in a noncompetitive market is
24 excessive if it is likely to pro --
25 produce a profit unreasonably high,

1 [not applicable for MPI], or if
2 expenses are unreasonably high in
3 relation to services provided."

4 This is from the model rating law from
5 the National Association of Insurance Commissioners.
6 It makes a critical point. This is what we're here
7 for. A noncompetitive market, there's a monopoly.
8 Consumers are vulnerable.

9 We generally assume in our free and
10 democratic society that the marketplace is a -- a good
11 tool to incent efficiency. That's how consumers are
12 protected in the -- in a open marketplace, because
13 companies have an incentive to be efficient. In the
14 context of a monopoly, there's always concerns that --
15 that efficiency may be an issue.

16 What this -- this quote stands for, it
17 just highlights the fact that it's open to look at
18 efficiency issues, to look at the reasonableness of
19 expenses, and it is open and indeed essential to test
20 whether costs are prudent and reasonable.

21 We could go back to a lot of cases from
22 Canadian law, but we thought there was a -- a question
23 -- a -- a case from a -- a Federal Court decision that
24 -- that just pointed out how commonplace the
25 examination of whether costs are just and reasonable

1 and whether it -- or necessary and prudent is, and this
2 is from a -- a 2004 question.

3 Questions may arise, among other things,
4 the allocation of costs between mainline and other
5 divisions or whether costs have been or are being
6 prudently incurred and whether mainline's compensation
7 plans are reasonable.

8 So here you have a pattern across
9 Canada, the Public Utilities Board saying prudence and
10 necessity, Ontario Energy Board, BC Energy Utilities
11 Commission, the Alberta Energy Board. Here you have
12 the Federal Court. It's commonplace, and that's why
13 the allegation of Manitoba Public Insurance is to our
14 client so radical, so highly unusual, and, frankly, so
15 shocking.

16 Back to the Crown Corporations Public
17 Review and Accountability Act. I've put in on behalf
18 of our client just a few excerpts of -- from Section
19 26(4), the -- the plain statutory language. What are
20 some of the things the PUB can take into account?
21 First of all:

22 "The amount required to provide
23 sufficient moneys to cover operating
24 maintenance and administration
25 expenses of the Corporation."

1 Not desired by MPI; required.

2 'Required' has a specific meaning. It's not a wish
3 list, it's what's required, and that's simply in accord
4 with what we'd expect out of the just and reasonable
5 standard. (5), again speaking to maintenance
6 operation:

7 "Any other reserves that are
8 necessary for the maintenance,
9 operation, and replacement of works
10 of the Corporation."

11 Again, the word 'necessary'. These are
12 words required, necessary, that don't invite a rubber
13 stamp. They invite judgment. They invite assessment.
14 They invite analysis. 26(4.8):

15 "Any compelling policy considerations
16 that the Board considers relevant."

17 Efficiency. To protect monopoly
18 consumers, clearly, efficiency is a relevant policy
19 consideration. It's long accepted, as you've seen from
20 Goodman or from the Board's prior decisions, any other
21 factors. This Board has a broad ambit under Section 77
22 of the Public Utilities Board Act. The breadth of that
23 analysis is reinforced by Section 26(4), but it's all
24 in that context of just and reasonable rates, of which
25 a core element is an assessment of the prudence and

1 reasonableness of costs.

2 And even Section 27(3), the Board can --
3 can change things. It can review an order when it
4 considers it reasonable and justified. And again, just
5 going back to that -- showing how these Acts are
6 written harmoniously and together, and this is just,
7 again, language very similar to Section 77 of the PUB
8 Act.

9

10 (BRIEF PAUSE)

11

12 MR. BYRON WILLIAMS: Just on relevance,
13 and we'll be nearing the -- coming towards the end of
14 our submissions. How do we make determinations about
15 relevance?

16 Now, My Friend Ms. Kalinowsky and I
17 could go through mind-numbing detail of each of the
18 requests that Manitoba Public Insurance has refused to
19 answer. I don't think that's a good use of the Board's
20 time. I think -- from our client's perspective, we
21 would submit, Start from principle.

22 Well, what's the test under Section 15
23 of the Public Utilities Board Rules and Procedure? Is
24 it material -- is it relevant? So what does
25 'relevance' mean? This is what the Supreme Court has

1 told us.

2 "The concept of relevance provides a
3 low threshold. Does the evidence
4 have a logical tendency to contribute
5 to a finding about a material fact?"

6 So what would be material here?

7 Something that could assist in the determination of a
8 just and reasonable rate. So what guidance do we have
9 about just and reasonable rates? We have the Board's
10 Order 5/'12, which is consistent, as you've seen, with
11 the approach of regulators across North America.

12 Does it relate to ensuring forecasts are
13 reasonably reliable? Does it relate to ensuring that
14 actual and projected costs are necessary and prudent?
15 Does it relate to assessing the reasonable revenue
16 needs of the cor -- of Basic? Does it relate to an
17 appropriate allocation of costs between classes? Does
18 it lead -- will it help to lead to a determination of a
19 just and reasonable rate?

20 And there's guidance as well from
21 Section 26(4) of the Crown Corporations Public Review
22 and Accountability Act. And I've only put in my
23 favourite four (4) sections, but there's lots of advice
24 for you from there.

25 That's how our client approaches

1 Information Requests. Most of our Information Requests
2 are developed by experts, then they're reviewed by
3 lawyers under this exact formula. Those are the
4 questions we ask ourselves. I wouldn't say we always
5 do it perfectly, but I would say we do it very well,
6 and it's always in the context of, Will it assist the
7 Board to come to a determination of just and reasonable
8 rates? So that would be the advice that we would give
9 to the Board in terms of that.

10 When looking at the critique of MPI to
11 the specific Information Requests of CAC (Manitoba),
12 from our clients' perspective, it's important to
13 realize that MPI is operating, and they made it evident
14 in Mr. Guimond's letter of August 18th, under a
15 fundamental misapprehension of the role of the Board
16 and of the law. I've call -- called it perhaps strain
17 into hyperbole a frail analytic evidi -- analytic
18 edifice undermined by a fundamental misapprehension of
19 the law, and as I've said before, an unusual and
20 radical misapprehension of the law.

21 In terms of the relief that we seek, I
22 think I've spoken to -- to relevance, providing full
23 and adequate response. We believe that the Information
24 Requests submitted by CAC (Manitoba) fit that
25 threshold. They go to the core determination of just

1 and reasonable rates.

2 The second bullet in terms of the relief
3 that we seek is to help us in future years, because
4 this was a backwards ref -- a backwards process, in our
5 client's respectful submission. If you cast your minds
6 to Rule 15 and Rule 16, the mandate on the Boar -- on
7 MPI is to provide a full and adequate response.

8 If it chooses not to, if it says
9 something's irrelevant, it is to provide speci --
10 specificity. Ms. Menzies will correct me if I've
11 misstated that, but specifics. It is to provide
12 specifics. Instead, MPI provided a boilerplate
13 statement.

14 So our client was forced to go to the
15 effort to try and understand what the boilerplate
16 meant, and then to -- to argue against a boilerplate
17 rather than specifics. That's backwards, in our
18 client's submission. It's inconsistent with what this
19 Board intended in its rules of procedure.

20 So what our client is hoping, in issuing
21 this order the Board will clarify is the proper way, if
22 a -- if a utility or a Crown is refusing to answer
23 Information Requests, to register that objection.
24 We're open to dialogue on this. Certainly in future
25 years, our client wouldn't mind putting in a -- a --

1 one (1) line when it files the original submission in
2 terms of why it's relevant, but if MPI or others are
3 going to be objecting to Information Requests, our
4 client under your rules is entitled to specifics, and
5 we weren't given specifics till after we made our
6 motion, and in our client's view, that needs to be
7 corrected.

8 With the panel's permission, I'd like to
9 ask Ms. Menzies to just pass out a -- an -- a suggested
10 amended schedule.

11 THE CHAIRPERSON: Yes, that's fine.
12 Thanks.

13

14 (BRIEF PAUSE)

15

16 MR. BYRON WILLIAMS: And we would ask
17 that that be marked as CAC Exhibit 7.

18 THE CHAIRPERSON: Thank you. The --
19 we'll mark that as Number 7.

20

21 --- EXHIBIT NO. CAC-7: Suggested amended schedule

22

23 MR. BYRON WILLIAMS: And, Madam --

24 THE CHAIRPERSON: My apologies. Thank
25 you. We looked --

1 MR. BYRON WILLIAMS: And -- and I'll
2 just --

3 THE CHAIRPERSON: Okay. Thank you.

4 MR. BYRON WILLIAMS: -- now, Madam --
5 Madam Chair and members of the panel, we had provided a
6 schedule in our original motion, and I was clearly
7 unduly optimistic in terms of how quickly an order
8 would -- would come, and that was my fault, certainly
9 not the panel's.

10 I think we had suggested that the
11 Information Responses be provided by today, and we all
12 know that's not going to happen. So what we've done
13 with our original schedule is, in essence, move it back
14 two (2) weeks.

15 And I won't go through this in -- in
16 great detail except for to say that we're -- we would
17 be seeking a filing of the unanswered Information
18 Requests by the end of the first week of September.

19 Going down the -- to the sixth line
20 there, we are seeking a additional round of Information
21 Requests. As the Board is aware, roughly 40 percent of
22 Information Requests were not responded to, so we
23 didn't get a chance to ask follow-up in the normal
24 course of the Second Round Information Requests.

25 So for that reason, our client believes

1 that it's important to provide for an additional round
2 of Information Requests, which is really the Second
3 Round, but for the ones that weren't answered. We've
4 suggested a -- a filing -- and keep scrolling up a
5 little bit, Diana, please. We've suggested a filing of
6 those responses by late September.

7 One (1) of the dilemmas for our client -
8 - our client is -- normally does not make a
9 determination in terms of the filing of expert evidence
10 until after a review of the First Round Information
11 Responses. Our client is up in the air in whether it
12 will file evidence or not, but there are two (2) areas
13 where it is heavily considering filing evidence, and,
14 from our client's perspective, they req -- we will
15 require receipt of the remainder of the Information
16 Requests from the First Round to make that
17 determination.

18 So we don't think, from our client's
19 perspective, we would be in a position to -- to even
20 make a call on evidence with certainty until the first
21 week of September, which will require some time to --
22 to finalize evidence.

23 So that's the suggestion we put into
24 timing. I note that this puts -- if we go to the next
25 page on the back, this puts a hearing started in later

1 October. And we're mindful of the stresses that may
2 occasion for the Board or for Manitoba Public
3 Insurance. It's generally been understood, at least as
4 I understand it, that MPI probably requires a Board
5 order in early December?

6 MS. KATHY KALINOWSKY: By December 1st.

7 MR. BYRON WILLIAMS: By December 1st.

8 One (1) remedy for that, if the Board is at all mind --
9 of a mind to accept our -- our schedule recommendation,
10 is that we've certainly seen it in the past where the
11 Board has issued an interim order in terms of the
12 quantum of its decision. You know, what's -- what is
13 the rate increase, and provides reasons at a later
14 date. So that's one (1) -- one (1) way to get at -- at
15 the December 1st deadline.

16 Subject to any questions of the Board,
17 I'm going to just move on to talk very briefly about
18 costs and then to conclude. And, Diana, you -- thank
19 you. Next page. Actually, back up for a second.

20 Just in terms of costs, the ultimate
21 determination of the Board in terms of costs is made in
22 its -- after an application for costs, and what we are
23 just bringing to the Board's attention, and we -- we
24 hope the Board will comment upon it in its decision, is
25 that Intervenors have been put to an extraordinary

1 expense by -- by the -- the path that MPI has chosen.

2 The expense is, first of all, arguing an
3 issue that our clients would have thought was well
4 settled in Canadian law, and in Manitoba many years
5 before. The expense is also a disruption of our
6 orderly preparation of a case. There's a hole gaping -
7 - there's a -- a gaping hole in our First Round
8 Information Requests, and that hinders the preparation
9 of experts, and it hinders the preparations of the
10 lawyers.

11 So certainly there's been a lot of costs
12 that -- that our client has been put to, and part of it
13 has been exacerbated by what we submit is MPI's failure
14 to comply with the Rules of Procedure, Rules 15 and 16,
15 and not providing spe -- specifics. So again, at the
16 end of the day, it will be up to the Board to determine
17 whether any of the time CAC has spent on this motion
18 was necessary and prudent, but we're certainly seeking
19 some guidance from the Board in its order if it
20 chooses, in terms of costs.

21 Just to finish, and we can go to the
22 final page now. It's well-known that the Public
23 Utilities Board is one (1) of the most important
24 regulators in Manitoba, perhaps preeminent in its -- in
25 the -- in its importance, and also the -- the respect

1 it's held in, in terms of its independence. It's got a
2 dual role. It's to protect the health of the
3 Corporation, but it's also there to safeguard
4 vulnerable rate payers, rate payers who are vulnerable
5 to a monopoly.

6 It's important that the Public Utilities
7 Board have the tools it needs to do its job, to approve
8 just and reasonable rates, to maintain public
9 confidence in the system. The Public Utilities Board,
10 for many decades, has been looking at the assessment of
11 the prudence and necessity of costs as a core element
12 of its rate sake -- setting function or rate approval
13 function. Our clients say that is correct, that
14 indeed, the Board is obliged to look at the -- the
15 necessity and prudence of costs.

16 But to remember that, of course, that
17 it's in the -- the rate approval function. You're not
18 seeking -- and certainly our client is not advising the
19 PUB to usurp the legitimate management function of
20 Manitoba Public Insurance. Our client is saying, in
21 the course of your job, that's an essential element.

22 We've got the quote here, "Rate
23 regulation is the price of monopoly." There's a lot of
24 strong arguments in public policy for the MPI monopoly,
25 but the tradeoff for consumers is the protection that

1 this Board offers through the Public Utilities Board
2 process.

3 Our clients are extraordinarily grateful
4 for the work the Board has done over the years, and
5 they're confident that consumers are as well. And our
6 client has treated this motion so importantly because,
7 from our clients' perspective, a core function of this
8 Board is under attack.

9 Thank you for those submission -- for
10 the opportunity to make these submissions.

11 THE CHAIRPERSON: Thank you, Mr.
12 Williams. Are there any questions from the Board
13 members?

14 MR. REGIS GOSSELIN: Mr. Williams, good
15 -- thank you for your presentation and comments.

16 Now, I would want you to -- to provide a
17 bit more explanation. I'd want you to provide a bit
18 more explanation about a reference you made to
19 legitimate. I'm looking at page 12.

20 And it kind of sticks out here in terms
21 of the prior paragraph, talking about, you know, the
22 error that PUB is alleged to have made. But then it
23 talks about a legitimate but a fatal concession. Now,
24 what -- the word 'legitimate' in this context?

25 MR. BYRON WILLIAMS: And -- and if I

1 could just ask you to flip back to the page previously
2 for just one (1) second, Diana? So just to put this in
3 context, these are the five (5) principles the PUB set
4 in Board Order 5/'12 with the fifth principle being
5 setting just and reasonable rates.

6 And then if we can go to -- to par -- to
7 page 12 now? Here you have MPI agreeing with all the
8 points but one (1), nece -- necessary and prudent. And
9 so we took this to mean, Mr. Chair, that they agreed
10 that setting just and reasonable late -- rates is a
11 legitimate function of the Public Utilities Board.

12 And -- and our client's submission is
13 that once you go down the path of accepting, as they
14 should, legitimately, that just and reasonable rates
15 are a legitimate function of the Public Utilities
16 Board, it inevitably leads to the conclusion that you
17 have to consider where -- whether actual and projected
18 costs are necessary and prudent.

19 So just in terms of the concession, Mr.
20 Chair, the concession would be the acceptance that this
21 is a -- the Board is to approve just and reasonable
22 rates. And from our clients' perspective, that fatally
23 undermines the bullet above, and we've tried to give
24 you the examples from BC, Alberta, Goodman, Bonbright,
25 Ontario, just to give the Board comfort that -- that

1 this is a core element of the rate-setting process.

2 So once you walk -- down the path of
3 just and reasonable rate, it is integral to walk down
4 the path of necessary and prudent costs, only for the
5 purposes of rate setting.

6 MR. REGIS GOSSELIN: I want to thank
7 you for suggesting that we don't need to look at all
8 the questions in detail that were submitted, so thank
9 you for that. But I do have a question I want to ask
10 you, and -- and I could have easily picked a number of
11 other questions, including questions from -- from the
12 PUB. But I'll -- you know, since you're the spo --
13 spokesperson here, I will be asking a question in
14 relation to...

15 So if you look at, for example, CAC/MPI
16 I-47.

17

18 (BRIEF PAUSE)

19

20 MR. REGIS GOSSELIN: And I guess I'm
21 looking at (b) in particular.

22 "Please file a sample job description
23 of a qualified service centre
24 employee, one that -- that that
25 employee would follow."

1 Now, can you relate to this panel the
2 significance of that request in relation to the
3 arguments you presented to the panel?

4 MR. BYRON WILLIAMS: Yeah. And -- and,
5 Mr. Chair, you've -- you've flagged probably the one
6 that -- one (1) of the ones that is -- is weaker in
7 terms of the Information Requests. So I'll concede
8 that right off the bat in terms of what CAC (Manitoba)
9 is seeking to do with its Information Requests.

10 But one (1) of the -- the elements that
11 -- that I -- that we're trying to do here is to get
12 insight into the quali -- how well MPI is -- is
13 managing its claims costs. And at least as we
14 understand the process, our client came to understand
15 through -- through certain sources that -- that the --
16 that some of the -- some of the service delivery had
17 changed over recent years.

18 So this was an attempt to try and
19 understand better what was going on with the service
20 delivery model and to try and get sense of whether we
21 were losing some expertise in terms of where MPI had
22 went. So I would -- I would concede freely -- I feel
23 very confident in the -- the strength of our
24 Information Requests.

25 This is one that on its surface is a

1 little harder to get at, but that is the -- kind of the
2 genesis of it, at least as I understand it, is we had
3 certainly received sources raising some concerns, and
4 so we were trying to follow this up and to better
5 understand the issue.

6 MR. REGIS GOSSELIN: Now, I could have
7 asked similar questions about -- and probably will, of
8 other -- of other Intervenors. And I guess, you know,
9 identifying IRs that are closely related to a -- a
10 determination of just and reasonable costs, prudent
11 costs, is admittedly a challenge, because we have --
12 you know, in -- in most rate application before this
13 Board, we get a tremendous number of IRs that scour the
14 application in many ways, it -- trying to establish the
15 salient issues that must be addressed by the panel.

16 Now, many of those IRs never end up
17 being addressed within a -- with -- within a rate
18 decision, you know. They -- they are not considered as
19 part of the ultimate issues addressed by the rate
20 decision.

21 Now, the question I have for you is
22 that, do you not see a concern around that particular
23 result? Some will argue that this is wasted money.
24 You know, we've gone through this expense of answering
25 these IRs, and they never show up in the rate

1 application decision from the panel.

2 What do you say about that?

3 MR. BYRON WILLIAMS: One could argue
4 that I think you'd be arguing a lot more if I tried to
5 introduce each of them as part of my cross-examination.
6 How we try to approach information requests is to find
7 things that we consider germane to testing the
8 application.

9 When you get certain responses, you'll
10 review it and say, Okay, so MPI has satisfied us that -
11 - that they've met the onus on this particular
12 occasion. So we're -- we're -- we don't have to press
13 that in cross-examination or closing, because it's not
14 -- through the Information Response itself, it has
15 clarified the issues, narrowed the issues.

16 So I would take strong umbrage with the
17 suggestion that somehow we're -- that by not using all
18 the Information Requests, we're somehow wasting the
19 process. We're using that to be more efficient, to
20 narrow the issues, and frankly, just as a technique,
21 Mr. Chair.

22 Even -- often I will use an Information
23 Request but never put it in our book of reference or
24 never cite it. I'll use an Information Request because
25 it explains a principle. I'll walk through those

1 principles in cross-examination without ever citing the
2 Information Request.

3 It's formed the foundation of my
4 knowledge, it's formed the foun -- but I just don't
5 expressly cite it. So we use Information Requests to
6 narrow the issues. We also use them even when we don't
7 expressly cite them.

8 There's always a dialogue about what's
9 one (1) Information Request too many or what's --
10 what's too little. And -- and I think those are issues
11 we -- we all struggle with. I'm told by others that,
12 in com -- comparison to other jurisdictions, we have a
13 -- a less intensive process. I would say that our
14 experience in Manitoba -- realize we had a \$300 million
15 over -- over collection -- over collection of -- of
16 revenues from consumers that had to be rebated in -- in
17 one (1) swoop.

18 Our experience in Manitoba has suggested
19 to us that in the past, perhaps we weren't being as
20 diligent as we should have been, and -- so that --
21 that's basically the -- the position our clients would
22 take. There'll be times when I'll concede that we'll
23 ask questions that -- that on reflection, we wouldn't
24 have. We try and edit those every year, and it's an
25 evolving process.

1 THE CHAIRPERSON: Okay, thank you very
2 much, Mr. Williams. Now we'll call upon Mr. Ray Oakes
3 from CMMG.

4

5 SUBMISSIONS BY CMMG:

6 MR. RAYMOND OAKES: Thank you, Madam
7 Chairperson, members of the Board. Before I commence,
8 in terms of the exhibits, I know you have my Motion.
9 We were direct -- or suggested that we file a -- a
10 listing of the questions, the MPI responses, the
11 relevance, and that was done in a document yesterday
12 circulated by email. I trust that the Board has that,
13 and that's available as an exhibit?

14 I'm seeing nods throughout the room, so
15 I'm going to take that as an affirmative. And also
16 before I commence CMMG's submission, I wish to commend
17 the two (2) counsel of CAC for their excellent review
18 of the statutory framework for the Public Utility
19 Board. I think that was one of the best submissions in
20 terms of content and delivery that I've seen in thirty
21 (30) years as a lawyer, and so I'd commend them.

22 CMMG adopts their argument with respect
23 to the statutory framework. What will follow this
24 morning will be the process as CMMG sees it, and our
25 recommendations with respect to this issue.

1 And that follows on, Madam Chairperson,
2 members of the Board, ladies and gentlemen, twenty-
3 three (23) years successively of being an Intervenor in
4 this process. I was first counsel for an Intervenor in
5 1991. I've been here every year since then.

6 During the course of that time, we've
7 had five (5) Chairpersons. We've had three (3)
8 different excellent Board counsel, and three (3)
9 different excellent MPI counsel that we've worked with.
10 Much has changed over the course of almost twenty-five
11 (25) years of that experience.

12 We've -- not only the personalities of
13 those participants that I referred to, but at the start
14 in the '90s, this was a very adversarial process.
15 There was hard-hitting cross-examination. But during
16 all of that, there was a respect for the process.
17 There was, in general, a spirit of cooperation, a
18 respect, and a collegial relation between the
19 participants.

20 That professionalism was tested on a
21 number of occasions. We had -- with respect to my own
22 contest -- constituency, we had massive year-over-year
23 rate increases that provided rate shock to consumers.
24 We had the problematic introduction of no fault
25 insurance in this province with a result that

1 motorcycle rates skyrocketed. We had new
2 methodologies.

3 I recall Marilyn McLaren telling me
4 pointedly in the MPI offices that loss transfer will
5 happen in Manitoba over her dead body. And thankfully
6 that didn't come to pass, although I was able to get
7 loss transfer introduced and this Board can take credit
8 for that. We have a form of loss transfer in the
9 attribution of loss cost based on fault of -- of
10 various classes of motorists.

11 So we've seen MPI's episodic financial
12 misdeeds recently, the most glaring, of course, the
13 \$300 million in unknown reserves that popped up
14 immediately after a GRA, and was first reported by way
15 of a press release. We saw MPI's attempts to give
16 millions of dollars to the 'U' of 'W'. We saw the
17 giving of a claim centre to a charity. We saw attempts
18 to pay for road repairs in this province. We saw
19 generous bonuses given to MPI executives in years when
20 they had surplus.

21 And I can tell the Board, over the
22 twenty-three (23) years that I've been Intervenor's
23 counsel, only on one (1) other occasion had I been
24 required to file a motion such as CMMG filed in the
25 course of this process, and that was when we had Dr.

1 Hickson, who was a brilliant PhD, and I think some of
2 the Information Requests became a little arcane and
3 detailed, and the Board wound up denying a request.
4 But it was some very limited questions that were an
5 issue, and not the holus-bolus denial that we've seen
6 with respect to the MPI standard response.

7 We're hitting new lows, and this has got
8 to be the worst introduction of a new president that
9 I've ever seen with this obstructionist platform. You
10 talk about getting off on the wrong foot. The -- in
11 terms of the experience, again, our motion says that
12 the res -- the response of the MPI is disrespectful,
13 high-handed, and dismissive of this process and the
14 Intervenors.

15 And the -- the -- it's hard to imagine
16 reading these letters and seeing Mr. Guimond's response
17 that we should work, "in a collaborative, non-
18 confrontational manner." It's much like somebody who
19 slaps you and says, Well, don't respond
20 confrontationally. Actually, it's worse than that,
21 because we get this plea that we have to work together
22 to deal with a very vulnerable Basic program, and I'd
23 suggest to you what the response really is, it's like
24 the criminal who shoots both his parents, comes to the
25 court and says, Well, have mercy on me, I'm an orphan.

1 So the responses in the two (2) letters,
2 I would suggest, are very difficult to swallow in the
3 course of this process. This -- these actions by the
4 Corporation have taken this process off the schedule
5 and is not -- is not compliant with the process that's
6 been in place for a considerable period of time.

7 MPI says they're providing a template
8 and we're to accept what they give us in this template
9 with just this repeated paragraph that says nothing.
10 He speaks -- MPI speaks about 'significant financial
11 costs' and then causes motions to compel answers with
12 significant preparation costs from all of the parties
13 that you see at these tables.

14 The pres -- new president of MPI needs
15 to know that the culture of respect starts with the
16 MPI, that he's got to understand what Manitoba
17 ratepayers expect of MPI. It's not this blocking of
18 information. It's transparency and accountability. If
19 Mr. Guimond had attended the last two (2) decades of
20 these hearings, I think that would be more evident. I
21 think it's more evident by just reading recent Public
22 Utility Board orders and listening to Intervenors.

23 I suggest that throughout this year
24 even, the credibility of the Corporation in these
25 hearings becomes subject to question. You'll recall

1 the last time we were in this room together, I asked
2 whether the MPI and the Board could countenance an
3 additional weekend for delivery of the First Round
4 Information Requests.

5 And we heard of all the hardship of the
6 Corporation that they have to spend overtime, and
7 reschedule holidays just to be able to give answers to
8 the usual rounds of interrogatories. Well, I have to
9 ask them at this point, how much time did it take to
10 give twenty-three (23) answers to CMMG? How long did
11 it take to give no answers to ARM?

12 If you're concerned about the health of
13 Basic, then I would suggest that the Corporation picked
14 a poor time to start a fight. It could have gone by
15 way of stated case at another time by agreement of the
16 parties and not taken this GRA off the rails. I
17 suspect that this is not the work of the incoming
18 president. I'd be surprised that someone would want to
19 start on that foot with a Board that he'll have to work
20 with throughout his career.

21 I have some questions for cross-examine
22 later whether this is the work of the outgoing
23 president, who was paid, I understand, some fifty
24 thousand dollars (\$50,000) to deal with this process.
25 And I'm certainly going to have some questions on

1 cross-examination about that.

2 With respect to the jurisdiction, as I
3 indicated, Mr. Williams this morning has outlined the
4 jurisdiction quite well. The reference in My Learned
5 Friend, Ms. Kalinowsky's, brief deal with the CMMG case
6 which I remember fondly in the Court of Appeal, even
7 though we lost.

8 At page 8 of Ms. Kalinowsky's brief she
9 reviews Section 26(4)(a)(ix) of the Crown Council (sic)
10 Accountability Act and refers to the -- any other
11 factors the Board considers relevant to the matter.
12 It's an extremely wide statement of jurisdiction. And
13 we want to bring that legal argument to a common-sense
14 example.

15 Say that the Board wishes a house to be
16 built. MPI, in this example, is a house builder. MPI
17 comes to the Board and says: I will build you a house
18 for a quarter million dollars. Please sign here.

19 Well, one would think the Board, as a
20 reasonable consumer -- and, of course, you protect the
21 reasonable consumers -- you would say: Well, hold on a
22 second. Does it have a basement? What's the
23 foundation like? Is it a grade beam? Have you done
24 silt testing to see if it's going to shift and crack?
25 What kind of studs in the walls do you have? Is it 2 x

1 6 so we can get R-20 insulation? What kind of windows?
2 Are they double pane or are they triple pane?

3 And the list goes on and on and on.

4 Obviously, the cost of something is based on the value
5 that you're getting. So the Board needs a very wide
6 jurisdiction to ensure Manitoba consumers, which they
7 protect, get the value for their insurance dollar.

8 With respect to the IRs that we asked,
9 as I indicated, the Corporation has only asked twenty-
10 six (26). It has answered -- or had only answered
11 twenty-three (23) and has not answered twenty-six (26).
12 In addition, a number of the other responses are, This
13 is covered in another section of the application.

14 Well, part of the reason we asks
15 Information Requests is so that we can have an orderly,
16 efficient cross-examination that saves time and money
17 for all parties. A general reference to a section
18 number in an application is not helpful for that
19 purpose.

20 And on the Third Round of Information
21 Requests, hopefully the Board orders that, we'll
22 certainly be going into those areas and trying to get a
23 concise, responsive answer to our Information Requests
24 that we can proceed efficiently on cross-examination.

25 With the Board's consent, I will not be

1 going through the last exhibit that was provided to the
2 Board yesterday, although I'm certainly willing to do
3 that and available to do that.

4 With respect to the question from the
5 Board about IRs that don't wind up being used, I would
6 again adopt Mr. Williams's comments. I'd also say that
7 a number of those questions come from our constituents
8 and their questions they have about the workings of the
9 Corporation and the workings of their insurance policy.

10 So even though it doesn't then pop into
11 the cross-examination, it has been distributed to those
12 members of the public. And that's certainly in the
13 public interest, I would submit.

14 In terms of overall issues, we ask more
15 questions this year about operating expenses.
16 Obviously, that should be a concern of this Board. In
17 2008/'09, operating expenses of MPI were \$41.2 million.
18 2012/'13, it had already gone up to \$65.4 million, a
19 12.2 percent increase. By 2014/2015, it'd gone up
20 \$69.9 million. That's an obvious area where this Board
21 needs to focus with critical examination.

22 The issue of benchmarking has been
23 around for a considerable period of time. Board Order
24 157/'12 was -- MPI was ordered to develop productive
25 factors to enable the assessment of cost containment

1 measures. We've had considerable experience with
2 Gartner reports, CIO score cards, peer group interval
3 training -- trending frameworks of issues. These are
4 issues that the Corporation has answered in the past,
5 and I would suggest that there's some estoppel in their
6 position with respect to their lack of answering these
7 at those time -- those at this time.

8 We will, if necessary, be developing
9 that legal issue further, should we be required to
10 produce a factum in the future. And I notice that My
11 Learned Friend Mr. Williams seems well on his way in
12 terms of being organized for that eventuality.

13 With respect to the schedule, as I
14 alluded to, CMMG certainly requires a Third Round. We
15 accept CAC's proposed schedule, although it causes
16 considerable reorganization and difficulty because of
17 course we organize our year's litigation and other
18 calendars around the suggested framework. And this is
19 certainly unusual to be starting the third week of
20 October, if that's what in fact is decided.

21 With respect to costs, I would think
22 that that is evident. And again, all Intervenors are
23 on the same page, that this has caused considerable
24 expense to our clients.

25 I specifically notice the consternation

1 it would produce to ARM with respect to the Board's
2 comments in their granting of Intervenor status for
3 ARM. And I don't think that that client of Mr. Frost
4 should be put to that expense. But I'll leave him to
5 address that.

6 Mr. Williams says this is a highly
7 unusual claim put forward by MPI. I suggest that not
8 only is he right, but it demonstrates that MPI is out
9 of touch with its consumers, the society we live in,
10 and the regulatory process.

11 They need to understand it's not their
12 money. It's the public of Manitoba's money, that we
13 need this Board to ensure that the spending of those
14 funds and the collection are reasonable and prudent.
15 And the only way to do that is to order full and
16 adequate responses to the IRs that have been produced.

17 And that's my submission.

18 THE CHAIRPERSON: Thank you, Mr. Oakes.

19 Any questions of Mr. Oakes? Mr.

20 Gosselin...?

21 MR. REGIS GOSSELIN: I do. Just one
22 (1) question, and I want to discuss hot mapping with
23 you because it was an issue in -- involved in a number
24 of Intervenor IRs.

25 Leaving aside the -- the fact that it

1 was ordered by -- by this Board at the last rate
2 application, could you link for me your views as to the
3 significance of hot mapping and its link to costs.

4 MR. RAYMOND OAKES: With respect to the
5 issue of hot mapping, the most alarming part of that
6 issue is that MPI hasn't been doing it. It's a tool in
7 the trade of those who are experts in road safety.

8 Of course, what it relates to is finding
9 the intersections or highways or whatever type of area
10 you're looking at and determining -- pinpointing where
11 the accidents occur, and then going beyond that
12 determination that this is an intersection or a highway
13 with a number of collisions outside of the norm, then
14 determining then reason for that, and then addressing
15 road safety strategies to prevent those collisions,
16 resulting in a reduction of collision costs overall.

17 And CMMG has to thank the bicycle
18 fraternity. The people from Bike Winnipeg are
19 extremely adept at understanding issues of road safety.
20 And that was brought to our attention last year, and
21 the Board saw the importance of it by making that order
22 in its Board order.

23 It's -- it's unbelievable that MPI has
24 paid no attention to that. And when we go to ask them,
25 Have they now awoken and decided to commit some

1 resources to reducing collision costs by use of that
2 tool, we're stymied and receive no answer.

3 THE CHAIRPERSON: Ms. Neville...?

4 MS. ANITA NEVILLE: Just one (1)...

5

6 (BRIEF PAUSE)

7

8 MS. ANITA NEVILLE: One (1) quick
9 question of you. You mentioned that a number of the
10 questions that you put forward have come from your
11 constituents or individual -- do you actively solicit
12 those questions, or do they come forward on their own?

13 MR. RAYMOND OAKES: They're submitted
14 to the board of CMMG, and then I meet with the board of
15 CMMG prior to every round of Information Requests. We
16 review the answers received from MPI, and then develop
17 new questions.

18 MS. ANITA NEVILLE: Thank you.

19 MR. RAYMOND OAKES: I could also add to
20 that I also attend their AGMs once -- where the members
21 are present and do a dog-and-pony show as to what
22 happened at the Public Utilities Board, explain the
23 issues, explain the Board Order and the rest, and
24 questions come up at that point, as well.

25 MS. ANITA NEVILLE: Thank you very

1 much.

2 THE CHAIRPERSON: Thank you very much,
3 Mr. Oakes. I'm looking at the time. It's 10:30. I
4 think this would be a good time to take about a fifteen
5 (15) minute recess, or break. We'll come back at a
6 quarter to eleven (11). Thank you.

7

8 --- Upon recessing at 10:29 a.m.

9 --- Upon resuming at 10:45 a.m.

10

11 THE CHAIRPERSON: Well, we're ready to
12 resume our hearing, and I'm going to call upon Mr.
13 Frost from ARM to give his submission.

14

15 SUBMISSIONS BY ARM:

16 MR. IRVIN FROST: Is my mic on?

17 Great, thank you. Mr. Chair, members of
18 the panel, thank you for allowing me to speak on behalf
19 of ARM in this motion. Our position is somewhat
20 different and more circumscribed as provided by -- to
21 us by the panel in terms of granting us Intervention
22 status. It's significantly more limited in respect of
23 what we are all about and what we are going to be
24 bringing forth to the panel.

25 Having said that, I am not going to go

1 into the history of the Public Utilities Board, the
2 hearings. Mr. Williams has done that admirably, and
3 certainly we adopt his position entirely. As far as
4 Mr. Oakes is concerned, he brings, what, thirty (30)
5 years of history, twenty (20) years of history, to --
6 into this room, and he has given you an excellent
7 presentation of his experience in -- in respect of
8 previous hearings and -- his experience in those
9 hearings, and we accept that wholly and adopt his
10 position entirely.

11 Our position is somewhat different.
12 Specifically, I real -- I'm speaking to the email
13 decision that was provided to us and the standing that
14 was granted -- or Intervention that was granted to us
15 to assist the Board in critically evaluating MPI's new
16 physical damage re-engineering program, reviewing MPI's
17 cost containment initiatives relative to the recycled
18 parts, and suggesting improvements in reducing physical
19 damage and repair costs. Significantly much more
20 narrow than My Friends opposite and on -- and on either
21 side.

22 Having said that, we provided MPI with a
23 list of IRs that we thought encaptioned -- or captioned
24 that particular enterprise, and we were basically
25 stonewalled for the most part. Well, not for the most

1 part; entirely.

2 Having said that, it's instructive. We
3 did -- in our submission, you will see we stuck pretty
4 close to general administrative law principles because
5 that's my home. I've spent forty (40) years in the
6 administrative law business, and I have spent no years
7 in the PUB business. So I'm not going to challenge any
8 of My Friends in terms of PUB history, PUB law. It's
9 an experienced body of lawyers that I have -- that you
10 have in front of you, and I defer to them entirely.

11 What I will, however, say is
12 administrative law principles don't subscribe to what
13 is happening here. Administrative law principles, the
14 rule of audi alteram partem, the rule of fair play, the
15 rule of natural justice, demands that parties be
16 allowed to cross-examine and test evidence. That's a
17 fundamental principle. The courts have said so time
18 and time again.

19 And in particular -- particularly in
20 this case, where you have such a central and core
21 exercise to the Manitoba public. It's an issue of
22 public good. And there have been laws and statutes
23 around public good. And there has been deferral to
24 both the expertise of panels in the area of public good
25 -- and I'm speaking particularly to the Social Services

1 Appeal Board, which I have spent decades in front of.

2 I liken that Board to this Board.

3 It's a social enterpri -- it's a social
4 exercise. It's an exercise of the public good, and
5 it's a specialized tribunal. In all cases, the courts
6 have accorded greater deference to specialized
7 tribunals in the areas that they have been given the
8 jurisdiction under their legislation.

9 Now, having said that, it's instructive.
10 I read through the material, and the conclusion of MPI
11 on page 19 of 20 in the letter to Mr. Gosselin dated
12 August 18th and the attached submission of MPI as at
13 August 6th, '14. I want to read one (1) line which I
14 frankly find fascinating. "The PUB's juris" -- it's in
15 the conclusion, page 19 of page 20:

16 "The PUB's jurisdiction is limited to
17 reviewing and approving proposed
18 changes to rates for compulsory
19 drivers and automobile insurance."

20 And when I listened Mr. Byron, it's --
21 to Mr. Williams, pardon me -- it struck me that what's
22 missing from that statement, the words 'just and
23 reasonable rates'. What they are asking you to do, as
24 I see it, is basically rubber stamp this application.
25 They're not interested in dialogue. They're not

1 interested in an examination of the facts. They're not
2 interested in an airing of the issues that are
3 legitimately and absolutely before this tribunal.
4 They're interested in basically mailing it in.

5 And it's astounding. I've never,
6 frankly, heard of that. Okay. I defer to the fact
7 that I have not been in the PUB environment. But I
8 have never heard of that in forty (40) years before
9 administrative tribunals. And I could spend ten (10)
10 minutes going through the administrative tribunals that
11 I've been before. And they have been very -- My Friend
12 and I have worked over -- we've ta -- about twenty (20)
13 years in that world.

14 But I've heard of that. I've never
15 heard of an organization coming to a tribunal and
16 saying, Please just stamp -- just review and approve
17 the proposed changes. That's -- this -- that's
18 actually the end of it. If -- if you're going to go
19 there, the rest becomes irrelevant and superfluous.
20 Frankly, I just -- mailing it in is all that's
21 happening here.

22 Having said that, and sorry -- I'm sorry
23 to be aggressive on that front, but it's, frankly,
24 somewhat astounding from my -- from my experience.
25 Having said that, I want to get back to what our role

1 is. Our role is relative to the decision that was
2 given on -- in the email and the -- with respect to the
3 comments that I've just read to you.

4 So what have we done? We have spent
5 time -- our office has spent time with the clients.
6 We've been cognizant of the direction of PUB. We've
7 developed IRs. We've submitted those IRs, twenty-nine
8 (29) in number. And what do we get? Nothing.
9 Frankly, nothing. It's -- it's -- and -- and it's
10 like, hello, I mean, what's going on? It's just you're
11 not there. You don't exist, so go away. That's the
12 message that my client has -- has heard.

13 Okay. So what's the key here? The key
14 here is relevance. I clearly understand questions that
15 have no relevance or bearing on the exercise, and
16 that's what the Board has to put -- the PUB has to put
17 its mind to. Are these questions -- and this is the
18 fundamental question. Is -- are the twenty-nine (29)
19 questions that we have put, ARM has put, to MPI
20 relevant to the terms of reference which it was given?

21 And, really, that's the beginning and
22 the end of this discussion. There's no question -- it
23 -- it's -- it's absurd to think that this Board doesn't
24 have the jurisdiction to deal fundamentally with what's
25 before it and to investigate costs. I walked through

1 this rate application and almost without question they
2 talk about controlling operating costs. They talk
3 about being cognizant that the operating expenses must
4 be tested. They talk about -- I'm sorry. They talk
5 about the physical damage -- I'm sorry, the physical
6 damage reeng -- re-engineering program as one (1) way
7 to manage costs.

8 And they talk about a saving of more
9 than \$13 million, the reduction of costs, including \$10
10 million directly related to reducing claims costs.

11 It's all about reducing cost. It's all about an
12 efficient organization that manages public funds in a
13 manner that's acceptable, reasonable, rational, and
14 transparent. And none of that is going to happen if
15 these -- if these IRs are not answered; it's -- it's
16 going to be a fiction.

17 So what I propose to do -- and I'm --
18 I'm going to be at your disposal here, because this is
19 a bit of an exercise. We have the IRs. And what we
20 have done -- I'm hoping that the panel has our -- our
21 document here, our spreadsheet. We have sent it along.
22 Oh, there it is. It's across. Thank you so much.

23 So what we have done is we have walked
24 through the request, the response, the MPI res -- the
25 MPI position, which is basically the first -- the first

1 box and nothing else. And it is a standard this is
2 none of your business, kind of. It's not a factor into
3 -- in the approval of cost rates, which, with all due
4 respect, is somewhat absurd.

5 But what we have done is, in the fourth
6 box, talked about relevance and necessity. And I'm --
7 I'm not going to read that. You can read that as well
8 as I can. It's just a waste of everybody's time. But
9 what's important and what I haven't done and what I
10 didn't get the time to do because of the fast pace this
11 thing has been moving forward is I've actually made --
12 and I'm prepared to do that right now verbally, if you
13 wish.

14 I -- these answers fall within the four
15 (4) corners of the rate application. They're actually
16 within the words, whether they're related generally to
17 operating costs or specifically related to the physical
18 damage re-engineering program. And again, I'm happy to
19 walk through -- it might take a bit of time, sadly, but
20 I'm happy to walk through that as quickly -- or another
21 way of doing that is I can go back and to -- tomorrow
22 put in a fifth box and show you where the relevance is
23 from within the four (4) corners of the application.

24 What is relevant here, frankly, is the
25 application, the terms of reference that -- that ARM

1 was given, and, finally, the -- the IRs. Do -- does
2 the whole thing come together in a rational and
3 reasonable way and -- and is it relevant?

4 We suggest to you -- and I'm going to
5 admit, because Mr. -- Mr. Gosselin's going to probably
6 point out, Well, is this actually relevant directly.
7 And you know what? In some cases, it's broader than it
8 is narrow. And I'm going to admit that without even
9 going there. But for the most part, 98 percent of this
10 spreadsheet, and specifically the relevance and
11 necessity box going down the -- going down the list, I
12 suggest to you respectfully is both relevant to the
13 terms of reference that the -- that ARM was given and,
14 secondly, to the job that this -- this Board must do in
15 -- whether it's the broad sense or the narrow sense in
16 terms of the physical damage re-engineering program,
17 which is the terms of reference, of course, as I've
18 indicated ARM was granted standing or intervention on.

19 I'm somewhat in your hands. If you wish
20 -- Mr. Chair, do you wish me to walk through the where
21 it is in terms of scope, where it is in terms of the
22 actual place in the application? I think there's the
23 various volumes. Or do you wish me to do that in
24 written fashion within a day?

25

1 (BRIEF PAUSE)

2

3 MR. IRVIN FROST: I'm sorry.

4 THE CHAIRPERSON: Mr. --

5 MR. IRVIN FROST: I'm told it's Madam
6 Chair. I'm getting confused.

7 THE CHAIRPERSON: That's quite all
8 right. He is Mr. Chair.

9 MR. IRVIN FROST: I -- then I'm
10 confused.

11 THE CHAIRPERSON: And I am Madam Chair.
12 I'm just chairing the panel. He's the Chair of the
13 Public Utilities.

14 MR. IRVIN FROST: Okay, so I'm not
15 entirely wrong.

16 THE CHAIRPERSON: No, you're not
17 entirely wrong. Thank you. Mr. Frost just got a brief
18 go-ahead. If you would like to go through and --

19 MR. IRVIN FROST: I will.

20 THE CHAIRPERSON: -- with your
21 presentation, we'd appreciate that. Thank you.

22 MR. IRVIN FROST: Thank you very much.
23 So what I propose to do is talk more about the request,
24 the response, the relevance, and necessities. ARM
25 requires the total for recycled parts over the period

1 that the program has been in operation in order to
2 demonstrate the decline in use of recycled parts, which
3 then results in increased claim costs.

4 The Corporation says in its overew --
5 overview at page 35:

6 "One of the main drivers behind the
7 observed rate change is a significant
8 increase in physical damage
9 forecast."

10 That comes from -- firstly I'll draw you
11 -- my first point of reference is the actual scope. I
12 believe that's within the four (4) corners of the
13 scope. I'm also going to go to SM-1.4, and I -- I
14 think if you just make a note of it and follow me along
15 rather than -- I don't want to read every single --
16 that will take, with all due respect, a great deal of
17 time, so I'll just give you what I believe to be the
18 reference, and you can follow it up, respectfully, on
19 your own.

20 It's SM-1.4, page 39, and it's AI-10,
21 'Part Sourcing', page 14, and it's in the overew --
22 overview, page 35. Those references capture that --
23 that area.

24 The next one:

25 "The Board needs to understand the

1 inherent conflict in the current
2 structure, whether the repairs markup
3 of the parts result in a preference
4 for the new or used of -- I'm sorry -
5 - for the used -- the use of new
6 parts instead of finding recycled
7 parts."

8 That -- we draw that from two (2) --
9 from a number of specific areas. One (1) scope, two
10 (2) SM-1.4, page 39. Next, page 14 of the prefiled
11 testimony, where the Chair -- where that is spoken to
12 in, I suggest, a general sense.

13 The next one that we look at, this looks
14 -- this looks -- I'm talking about ARM 1-3. This looks
15 for the acknowledgment of the conflict stated. I -- I
16 am drawing that from AI-10, the -- it's titled 'Part
17 Sourcing', page 14.

18 This is -- the next one is 1-4. This is
19 an issue of cost containment in order to determine if
20 the Corporation is being ineffective -- is being -- is
21 doing an ineffective job -- should be doing, pardon me,
22 an ineffective job at controlling costs. I take that
23 from AI-10, Part Sourcing, page 14, or the rate
24 application prefiled testimony page 14, and also I draw
25 on the scope that ARM was given in terms of

1 presentation and attendance.

2 One brack -- 1-5, this is a question as
3 to whether MPI is making the best use of all recycled
4 parts available with a view of cost containment. I
5 draw that from AI-10, Part Sourcing, page 14, page 39,
6 SM-1.4, and again the scope -- the scope of -- of our
7 inter -- ARM's intervention.

8 1-6, this again is a review of the
9 efficacy of the cost containment of the Corporation in
10 this area. I draw that from -- from page 42 SM-1, page
11 14, the rate application prefiled testimony. Cutting
12 costs of the Corporation was the underpinning of the
13 Chair's comments there.

14 The next one, this is to assist --
15 that's 1-7 -- this is to assist the Board in
16 understanding the issue of how recycled parts are
17 sourced. I draw my reference there from SM-1.3.6, page
18 34. The next one is one (1) point -- 1-8. This
19 question is asked with a view to determining whether
20 MPI running of the RPP has been more cost effective
21 than the previous system. I draw that from 1.3.6, page
22 34.

23 Next is 1-9. This is a review of the
24 efficacy of the electronic glass program to determine
25 MPI is containing cost. I draw that from 'S' point --

1 SM-1.4.4, page 42.

2 The next is 1-10. This is a question on
3 the amount of glass, the claims to be determined, at
4 what cost it's -- and what cost has been experienced,
5 and how it is trending. I draw that from the rate
6 application pre-filed testimony, pages both 13 and 14.

7 ARM 1-11. This is a determination
8 whether steps taken by MPI has resulted in the benefit
9 to the Manitoba consumer by a cons -- by a consequent
10 increase in the usage of recycled parts. I draw that
11 from page 34 SM-1.3.6, and also the scope of
12 intervention that the Board kindly granted us.

13 1-12. This is to determine if there are
14 standards that are being ignored by MPI in dealing with
15 untrained persons which will result in increased or
16 other costs to the Manitoba insurance consumer. I draw
17 that from page 34, SM-1.3.7. Also, I draw that from
18 the scope of -- that was granted to ARM.

19 This is a question of safe -- I'm sorry.
20 1-13. This is a question of safety to the monitoring
21 public as a result of MPI's policy on parts, only
22 salvage. I draw that from page 34, SM-1.3.6, also from
23 the scope.

24 ARM 1-14. This is a question directed
25 to what standards of the processing of the recycled

1 parts are met. I draw that from page 34, again, SM-
2 1.3.6, and also the scope that was granted to ARM in
3 terms of intervention.

4 1-15. The relevance and necessity issue
5 is -- is discussed in the last box. This is a question
6 that is relevant to road safety and the provision due
7 to a supervision of whether wrecked vehicles are
8 allowed back on the road after repair. This is in
9 issue of SM-3 road safety and the scope that was
10 granted to ARM.

11 And I'm just going to go down to 1.16
12 and suggest that those references apply to 1.16 and
13 1.17, same rationale you'll see following in those
14 boxes going down.

15 The next one is 1.18. This broadens the
16 concern from road safety to also environmental and
17 other health risks. I'm just going to talk about this
18 in terms of road safety.

19 And I'm going to sit back now and -- and
20 -- and take a lump if I can, because there was no
21 direct reference to road -- to the environmental impact
22 and health risks perspective. I tried to find it. I
23 could not find it, so I'm going to take the liberty of
24 suggesting that may be beyond the scope that we were
25 granted, but is still relevant for the purposes of this

1 hearing. It may be in the hands of one or the other
2 parties here, but it is for -- for -- I suggest,
3 relative. The words, perhaps, do not lie in our mouth,
4 if I can put it that way, but they are something that I
5 think this Board ought to consider from a public safety
6 exercise, and from -- from a consumer safety exercise,
7 and from a health and risk exercise as well.

8 1-19. This is seeking information from
9 that contained in the application with a view to
10 testing evidence of the Corporation. I'm just going to
11 walk down 1-19, 1-20, and 1-21.

12 And I'm going to suggest to you we find
13 our authority for asking those questions, one (1), in
14 the scope, two (2), in SM-1-3-6, page 37, AI-10, pages
15 1 through 17, and also -- also generically in the
16 prefiled testimony of -- of the Chair.

17 I'm sorry. Yes, thank you. I am sorry.
18 SM-1-3-6, I said page 37. It's also contained at page
19 34. It's in two (2) places in that area, and I've
20 talked to you about AI-10. So that take -- carries us
21 down to 1-20, 1-21.

22 Now I'm taking you to 1-22 and, again,
23 same rationale. Our authority, I suggest to you, in
24 terms of relevance, comes from both the scope, SM-1-3-
25 6, at page 34.

1 1-23, this is in relation to other
2 costs, including health and safety of Manitobans in
3 connection with their exposure to tox -- tox -- to a
4 tox -- to tox -- toxics in the containment of products
5 that is a direct result of these sales wrecked
6 automobiles. I suggest to you this is a safety issue.
7 AI-10, pages 3 and 4.

8 1-24, this is the central question and
9 it gives the rationale referred to in the terms of the
10 main drivers behind the observed rate changes as about
11 the plan to control the physical damage costs.

12 AI-10, pages 1 to 17, which is a
13 discussion around that, and I suggest is relevant, and
14 certainly in dealing with the controlling of costs in
15 terms of physical damage to vehicles.

16 Does -- the next question -- the next
17 answer is 1-25, this is a central question to our
18 intervention, and relate to the physical damage costs
19 which will -- which will result in required changes.

20 I'm going to suggest 1-25, 1-26, 1-27
21 all have the same focus and edge, and they all find the
22 genesis AI-10, page 14, and obviously, the terms of
23 reference that ARM was given in -- and -- in being
24 granted intervention.

25 1-28, this is to determine if the

1 Corporation is acting efficiently in realizing of
2 recycled glass.

3 Again, it's clearly within the scope of
4 the intervention granted to ARM. SM-1-4-14, page 42,
5 AI-10, page 14. Those are the areas we have drawn our
6 authority from. Why did -- 1-29, this is to review
7 whether the Corporation has made effective decisions in
8 the management of recycled parts usage, with a view to
9 containing costs.

10 Again, we find our authority within the
11 scope of intervention allowed, SM-1.4.4, pages -- page
12 42, AI-10, page 14.

13 That is, respectfully, a quick and dirty
14 recitation of where we feel -- where ARM feels that its
15 authority lies is in terms of relevance. Bear in mind,
16 this entire exercise is one of containment of costs,
17 one of managing costs efficiently.

18 And, you know, whether you're using
19 recycled parts as opposed to new parts, it becomes a
20 central factor in that exercise. The use of new parts,
21 obviously, is more costly than recycled parts. The
22 management and exercise of that endeavour is also one
23 (1) that att -- attracts a discussion around costs.

24 So at the end of the day, ARM, having
25 reviewed these and worked with our office on these,

1 feels that it's central -- it's important that these
2 questions be asked and answered, and, of course, what
3 follows from that will be ARM's position and the
4 evidence may or may not be present. You -- you asked
5 Mr. Williams some of these -- Mr. Gosselin asked Mr.
6 Williams. Well, some of these don't find their way
7 into the full extent.

8 And in the fulness of time going
9 forward, well, that's -- for the exact reasons that
10 they are here. The questions are asked, the questions
11 are answered, the focus is narrowed and narrowed and
12 narrowed. Is it an efficient way of doing business?
13 And I suggest to you this is a process. A process
14 follows along until at the end of the day, you distill
15 a solution, or you distill an answer, or you get to a
16 point where you have a fair -- with a justified, a just
17 and reasonable discussion and decision around costs and
18 rate application.

19 So this is a process that needs to be
20 engaged. If it's not engaged, and I respectfully say
21 it's a farce. It's -- it just -- you might as well
22 just close the door today and say, Well, let's approve
23 their rate application.

24 I think that's actually what they're
25 asking you to do. I kind of shook my head when I read

1 it, but that's kind of what is being asked. This is
2 what was asked -- being asked. This is the answers
3 we're giving. We're not allowing you to test the
4 answers. We're not allowing you to cross-examine and
5 weigh and measure those answers, whether it's at the --
6 at the Board level or at counsel's level, but we are
7 asking for this rate application. Trust us.

8 Frankly, it -- in my mind, again, I
9 admit I've not been before this process, so I am green
10 here, but this is not a process that, A) I am
11 comfortable with, respectfully, and, B) that I'm
12 familiar with. I'm done.

13 One (1) more thing. Around costs, I
14 clearly understand and I'm not challenging at all the
15 perspective taken by PUB around the around the costs to
16 my client, and we're not -- but this is extraordinary
17 and needs to be dealt with on an extraordinary basis.
18 My client has undertaken extra work on this. I have
19 undertaken extra work on this. There have been
20 discussions.

21 This is not contemplated in the budget.
22 I don't know how else to put it. This is something
23 that needs to be dealt with firmly, and a message needs
24 to be sent to MPI. It needs to be sent to them. This
25 is not the way we do business, and if you don't like

1 it, we'll see you in the courts, but this is not the
2 way PUB does business. And the way courts do it is
3 they award costs accordingly, and I suggest to you you
4 can adopt that exercise as well and award costs
5 accordingly.

6 Granted, it's at the end of the day. I
7 -- I recall you saying that made at the conclusion.
8 You've said that in -- in the -- in -- in the decision,
9 and I'm suggesting you keep that in mind, and -- and I
10 respectfully request that in the area of costs, you
11 make some comments relative to sending a message to
12 MPI. Thank you.

13 THE CHAIRPERSON: Thank you, Mr. Irvin.
14 Now, just any questions?

15 Okay, now I'm going to ask CAA, Ms.
16 Young, are you going to comment?

17 MS. ANGELE YOUNG: CAA Manitoba did not
18 put forth a motion for this matter. We don't have any
19 concerns with any of the motions put forward by other
20 Intervenors, and we're comfortable with the PUB
21 process, and we don't really have any other comment,
22 but open to questions.

23 THE CHAIRPERSON: Thank you very much.
24 Now I'll ask Mr. Monnin to comment from Bike Winnipeg.

25 MR. CHRISTIAN MONNIN: Merci, Madam la

1 President. Thank you.

2 My messages will be rat -- my -- my
3 words today will be rather brief. Obviously, as you
4 know, we don't have a motion before the PUB either.
5 However, we are here to advise that we support and
6 adopt and rely on the submissions that were made today
7 to the effect that they'll have impact on the IRs that
8 had been put forward by Bike Winnipeg.

9 And if I can just chime in on what My --
10 My Friend, Mr. Frost, had said with regards to a
11 message needing to be sent, we just view this as a --
12 an ideal opportunity for the Board to really set down
13 definitively on a going-forward basis the issue with
14 regards to jurisdiction and -- and the parameters to
15 responding to IRs in these processes.

16 And hopefully this opportunity will be
17 taken to, frankly, avoid this type of situation going
18 forward. On the cost issue for us, we're having no
19 motion forward -- being put forward. We have been
20 severely prejudiced in that regard. However, if we
21 have to come back on a similar issue or a similar -- or
22 a motion of a similar nature, certainly, you know, that
23 will augur -- the costs will be going north, and we'd
24 like to avoid that. Thank you.

25 THE CHAIRPERSON: Thank you. Any

1 questions from...? No. Thank you very much.

2 Yes, now then, we could hear from MPI.

3 Do you want to recess for lunch at this point, or do
4 you want to go ahead?

5

6 SUBMISSIONS BY MPI:

7 MS. KATHY KALINOWSKY: I can proceed if

8 that's all right with the other parties. Good morning.

9 I would like to introduce myself. I'm Kathy

10 Kalinowsky, general counsel, corporate secretary for

11 Manitoba Public Insurance. I have to my right here Ms.

12 Heather Reichert, who is the chief financial officer

13 and vice president of Finance of the Corporation.

14 Earlier on in the day, Mr. Guimond was

15 in attendance; however, he's departed. He had another

16 commitment, I believe, to attend to, but I would also

17 like to point out somebody else in the audience, and it

18 is Mr. David Navratil, who is from the Crown

19 Corporations Council who is taking an interest in this

20 and is attending to hear the arguments about corporate

21 governance. So that's something that's quite unique in

22 this hearing and, of course, this motion.

23 I would also like to introduce the

24 exhibits, but I'm not sure which number we start at, so

25 I might need some help from the Board secretary for the

1 PUB numbers.

2

3

(BRIEF PAUSE)

4

5

MS. KATHY KALINOWSKY: So I would ask
6 that the letter from Mr. Dan Guimond to Mr. Regis
7 Gosselin dated July 31st, 2014, be entered in as MPI
8 Exhibit Number 5.

9

10 --- EXHIBIT NO. MPI-2: Letter from Dan Guimond to
11 Regis Gosselin dated July
12 31, 2014

13

14

MS. KATHY KALINOWSKY: The letter from
15 Mr. Guimond to Mr. Gosselin dated August 18th, 2014, be
16 included as MPI Exhibit Number 6.

17

18

--- EXHIBIT NO. MPI-3: Letter from Dan Guimond to
19 Regis Gosselin dated August
20 18, 2014

21

22

MS. KATHY KALINOWSKY: The motion brief
23 of Manitoba Public Insurance should be marked, then, as
24 Manitoba Exhibit Number 7.

25

1 --- EXHIBIT NO. MPI-4: Motion brief of Manitoba
2 Public Insurance

3

4 --- EXHIBIT NO. MPI-4-1: PUB Standard Response IRs

5

6 --- EXHIBIT NO. MPI-4-2: CAC Standard Response IRs

7

8 --- EXHIBIT NO. MPI-4-3: ARM Standard Response IRs

9

10 --- EXHIBIT NO. MPI-4-4: CMMG Standard Response IRs

11

12 MS. KATHY KALINOWSKY: And the
13 rationale for the standard responses which is -- which
14 is that chart from MPIC should be marked, I would
15 suggest, Exhibit MPIC (sic) Number 8.

16

17 --- EXHIBIT NO. MPI-8: Rationale for the standard
18 responses from MPI

19

20 MS. KATHY KALINOWSKY: And I believe
21 that's all of the exhibits.

22 MS. JENNIFER DUBOIS: Excuse me, Ms.
23 Kalinowsky, I apologize. We would -- had already
24 numbered those ones, the exhibits that you just entered

25 --

1 MS. KATHY KALINOWSKY: Yeah.

2 MS. JENNIFER DUBOIS: -- so I'm sorry,
3 the letter from Mr. Guimond should be MPI Exhibit
4 Number 2. That's the one dated July 31st, 2014. The
5 letter dated August 18 should be MPI Exhibit Number 3.
6 And the motion to compel should be Exhibit Number 4.
7 And we've numbered the attachments 1, 2, 3, and 4 to
8 the motion as 4-1, 4-2, 4-3, and 4-4. I apologize for
9 that.

10 MS. KATHY KALINOWSKY: Okay. Thank --
11 thank you for that. I appreciate that.

12

13

14 (BRIEF PAUSE)

15

16 MS. KATHY KALINOWSKY: What I would
17 like to say at the outset of this motion and response
18 of Manitoba Public Insurance Corporation is that
19 indeed, Manitoba Public Insurance is absolutely willing
20 to be transparent. It's absolutely willing to be
21 collaborative. And of course, we responded fully to
22 over five hundred and fifty (550) questions, or parts
23 of questions.

24 So that's five hundred and fifty (550)
25 questions were responded to fully by Manitoba Public

1 Insurance. We answered all questions on cost
2 allocation. We answered all questions on financial
3 projections. We answered all questions on rates being
4 proposed. We answered all questions on actuarial
5 modelling. We answered all questions on the DCAT, and
6 we answered all questions that relate to future
7 expenditures that are within the scope of the hearing
8 for the rates.

9 The application itself was extremely
10 thorough, and contained massive amounts of information,
11 especially the expense section. It was substantially
12 enhanced from last year at significant effort by a
13 number of people at the Corporation. There was a
14 massive amount of detail was provided to support the
15 application, and analysis was contained.

16 The total number of pages of the
17 application were four thousand seven hundred and fifty-
18 three (4,753) pages. Also included were three thousand
19 (3,000) pages of DCAT materials. That's an enormous,
20 enormous amount of detail provided to this Board.

21 I also want to say at the outset of this
22 motion that MPI acknowledges the importance and the
23 many benefits derived from the public rate-setting
24 process. Basic rates are more fair and more equitable,
25 and rate-making at MPI has improved as a result of the

1 PUB process.

2 Mr. Williams has spent great time and
3 placed much emphasis on explaining a rate-making model.
4 And, indeed, it's the dominant rate-making model in
5 North America. Unfortunately, not as much time was
6 spent on the Manitoba legislation. The Manitoba
7 legislation is extraordinarily different from that of
8 just about every other North American jurisdiction.

9 In my brief I spend my time and my focus
10 on the made-in-Manitoba leg -- solution for regulation
11 as prescribed in the three (3) Acts by the Government
12 of Manitoba. I can concede absolutely that if Manitoba
13 Public Insurance were under this standard model of
14 regulation which is rate-based rate of return cost of
15 service model of regulation, then we wouldn't be here
16 today. We would have answered just about every one of
17 these IRs.

18 Unfortunately for Mr. Williams and for
19 others, the legislation is profoundly different in
20 Manitoba for MPIC. So although it's interesting to go
21 back to the chestnuts of Bonbright, of course, who's
22 extremely well respected -- it's the text on rate
23 regulation for public utilities -- it's using a
24 different model. It's not using the Manitoba
25 legislation which is so different for MPIC.

1 So I'm looking at MPI and is looking at
2 the PUB to make a Manitoba solution in its order by
3 examining that legislation. I'm going to walk you
4 through the legislation in Manitoba in the Manitoba
5 Court of Appeal cases.

6 So with that, could we bring the screen
7 up? And is there any way for me to able to move
8 through the screen myself, or not, or -- if we could
9 just pause for a moment and I can get some
10 technological assistance, that would be helpful.

11

12 (BRIEF PAUSE)

13

14 MS. KATHY KALINOWSKY: Mr. Simonsen
15 referred to me as a newbie and a rookie in this regard,
16 and I certainly proved it with this new technology. I
17 appreciate it. It's a learning curve obviously, and
18 next time we'll, of course, ensure that we're up to
19 speed on this and it will just flow seamlessly, as it
20 did for Mr. Williams.

21 But I do want to point out that I will
22 be walking through the legislation, and walking through
23 the case law from the Court of Appeal in Manitoba. And
24 I will be also at times addressing the comments that
25 were made by the Intervenors's counsel this morning.

1 And, of course, I do recognize that this is a really
2 important hearing and motion for MPI and, of course,
3 for the Intervenors and, obviously, most importantly,
4 for the Public Utilities Board.

5 In making its decision to decline to
6 respond to numerous Information Requests MPI considered
7 very carefully the importance and the benefits of the
8 rate-setting process, along with the legal framework
9 both in legislation and in case law that's created the
10 PUB, and the other government entities to which it,
11 MPI, is accountable.

12 In this motion CAC seeks to expand the
13 jurisdiction of the PUB to require MPI to provide
14 information irrelevant for rate setting, and thereby
15 undertaking an operational and other reviews of MPI
16 that are the responsibility of other government
17 entities. And I'll walk you through the legislation
18 and I'll show you that the operational review and other
19 types of reviews are the jurisdiction of other
20 entities.

21 The PUB's sole function is to review and
22 approve proposed changes to rates for Basic, which are
23 proposed annually by MPI. In saying that, that's a
24 paraphrase of a -- it's almost an exact quote,
25 actually, from the Court of Appeal in Manitoba in the

1 stated case that occurred about three (3) years ago.

2 In putting that down, it doesn't mean
3 that MPI, in any way, shape, or form, expects that the
4 PUB is going to rubber stamp their application. Of
5 course not. We're used to a regime in which, let's say
6 two (2) -- two (2) or three (3) years ago applied for a
7 6.8 percent rate decrease and the PUB thought that
8 wasn't enough and ordered an 8 percent rate decrease.
9 Absolutely. That's the prerogative of the PUB.

10 In other years, and I don't have the
11 rate stat with me right now, but MPI asked for a small
12 rate increase. The PUB thought, oh, that wasn't enough
13 and granted a rate increase in excess of what was
14 applied for. What it means is that the PUB looks and
15 focuses at the rates for Basic.

16 And the reality is, and it might be
17 tough reality for many to swallow, is that the
18 requested information not responded to is actually not
19 required by the PUB. By ordering its production,
20 indeed, the PUB would extending its jurisdiction in a
21 manner that's not intended by the Legislature of the
22 province.

23 The case law at the Supreme Court of
24 Canada and provincial courts of appeal regarding
25 disputed tribunal orders ultimately boils down to one

1 (1) simple question at the end of the day: What's the
2 mandate? What's the jurisdiction of the tribunal?

3 Determining the jurisdiction of a
4 statutory body such as the PUB is based upon reviewing
5 and interpreting all the statutes, and that follows. So
6 my brief of the Corporation addresses the following
7 four (4) points, and you can look at them there.

8

9 (BRIEF PAUSE)

10

11 MS. KATHY KALINOWSKY: And I want to
12 talk about the first point, which is what legislation
13 determines the jurisdiction of the PUB in respect of
14 MPI? Well, the PUB is created by statute. MPI is
15 created by statute. The respective jurisdictions are
16 also established by statutes. And the Court of Appeal
17 in the stated case in 2011, determined that the
18 jurisdiction of the PUB in relation to the MPI is set
19 out in the three (3) Acts.

20 And the Court of Appeal made the
21 following comments about the jurisdiction of the PUB.
22 And I'm going to read in some of this because it's
23 important. But rest assured, I'm not going to be
24 reading in all the quotes in any way, shape, or form.

25 But the mandate of the PUB in the

1 context of this case is set out in Section 26 of the
2 Crown Corporation's Public Review and Accountability
3 Act, that being to review and approve the MPI's rate
4 bases and premiums charged with respect to compulsory
5 driver and vehicle insurance.

6 So that's the sentence there, slightly
7 paraphrased, where I said it's limited to. But that's
8 the -- that's the exact sentence that Mr. Frost had
9 difficulties with in the conclusion and said that it
10 was a remarkable sentence, a remarkable conclusion by
11 MPI. And I'm just saying, You know what, it's from the
12 Court of Appeal.

13 As can be seen from its annual orders,
14 the PUB has expressed dissatisfaction with three (3)
15 aspects of its mandate.

16 Number 1. From the beginning of its
17 oversight of the MPI, the PUB has expressed
18 dissatisfaction with limiting -- limited jurisdiction,
19 and has been looking both to obtain information related
20 to non-Basic lines of business and to expand its
21 jurisdiction to include review of rates for non-Basic
22 lines of business.

23 Number 2. PUB has taken the position
24 that driver and vehicle licensing should have been
25 included in the Basic line of business, and has been

1 recommending it be moved so it be subject to review of
2 the PUB.

3 Number 3. The PUB has expressed
4 dissatisfaction with the fact -- with the fact it has
5 not been involved in the planning for significant
6 changes to MPI's operations affecting both the Basic
7 and non-Basic lines of business, but rather has only
8 received disclosure at subsequent GRAs.

9 The court then goes on to say that
10 notwithstanding the fact that the PUB has made its
11 concerns known to the government on an annual basis
12 since 1989, the government has not made any changes to
13 the PUB's legislated mandate to expand its
14 jurisdiction. Clearly, the government must be aware of
15 the PUB's concerns and, notwithstanding, is either
16 satisfied with the PUB's existing limited mandate --
17 that's the PUB's existing limited mandate -- or at
18 least to date has chosen not to act.

19 Skip down to paragraph number 34 there.
20 But under the legislative scheme the Court of Appeal
21 then proceeds with, the Crown Corporation's counsel has
22 the mandate to review all long-term plans and to
23 receive and review the annual financial statements for
24 MPI's entire business, which would include both Basic
25 and non-Basic lines of business. The government

1 receives financial disclosure of MPI's entire
2 operation, including both Basic and non-Basic lines of
3 business, which includes an annual report of its
4 operations and the annual audited financial statements,
5 all of which are subject to public review by a
6 committee of the Legislature.

7 The government has the ultimate
8 authority to approve and enact all rates for both Basic
9 insurance and the non-Basic lines of business, subject
10 to the proviso that it cannot approve rates for Basic
11 insurance that have not been approved by the PUB. It,
12 therefore, has the ult -- "it" being the government --
13 has the ultimate responsibility for the financial
14 health of MPI.

15 It is within this legislated scheme that
16 the PUB's mandate to review the rates for only Basic
17 must be interpreted. And I say that, to rephrase that,
18 it is within this legislative scheme that the PUB's
19 mandate to review rates must be interpreted.

20 So moving to the second question there:
21 What's the scope of the jurisdiction of the PUB in
22 relation to MPI then? Well, first off, you want to
23 look at the Crown Corporation's Public Review and
24 Accountability Act.

25 And we can talk about -- and I break it

1 down -- about the legislated role of the Crown
2 Corporation's counsel vis-a-vis MPI. And then I go on
3 to the other -- other dover -- government entities: the
4 board of directors, the government itself, the
5 minister, the Office of the Auditor General, et cetera.

6 So this Crown Corporation's Public
7 Review and Accountability Act essentially applies to
8 the big three (3) Crowns, although there are some other
9 smaller Crowns. But -- so MPI, Manitoba Hydro, and
10 Manitoba Liquor and Lotteries.

11 Well, Liquor and Lotteries of course has
12 its own pricing system, and that's not subject of the
13 jurisdiction of the PUB in any way, shape, or form.

14 But Part 2 of the Crown Corporation's
15 Public Review and Accountability Act establishes the
16 Crown Corporation's counsel. So let's take a look at
17 what -- the powers and the duties, particularly the
18 duties, of the counsel. And it's "the counsel shall".
19 So it's imperative: "shall". It's not permissive; it's
20 "shall".

21 This is what you have to do to the
22 counsel. So facilitate the development of a clearly
23 defined mandate in a statement of purpose for the
24 Corporation. B) Facilitate the development of
25 consistent and effective criteria for measuring the

1 Corporation's performance.

2 Think of that. That's benchmarking.

3 That's operations.

4 C) Review long-term corporate plans
5 and capital expenditure proposals of
6 corporations. Ensure consistent
7 practices amongst two (2) or more
8 corporations where appropriate, and
9 provide any advice to the LGC on
10 those plans, proposals, and
11 practices, or any other matter of
12 policy affecting corporations that
13 may be requested by the LGC.

14 And D) Receive and hear submissions
15 from any person who, in the opinion of the council, has
16 knowledge respecting any aspect of the corporation's
17 activities regarding alleged failures by the
18 corporation to comply with any act or policy of the
19 council.

20 And here are the powers of the council.
21 And it's "may", so it's permissive in this case.

22 So request the CEO of any corporation to
23 provide reports to the council at any time on matters
24 considered by the council likely to have a material
25 effect on the performance of the corporation in terms

1 of its objectives. You can request the auditor to
2 provide reports to the council on any matter related to
3 the finances of the corporation or access -- have
4 access to any other report issued by the auditor. And
5 the auditor can requ -- can request the auditor to
6 undertake additional audits or other work to
7 investigate and report to council on any matter.

8 So these duties and powers belong to the
9 Crown Corporations Council, therefore, understanding
10 that the CCC has these duties, has these powers, helps
11 define the duties and powers of the PUB. So any
12 interpretation of the PUB powers in Section 26 cannot
13 reasonably include those powers of the CCC, because the
14 Legislature has specifically provided them in other
15 parts of the legislation to the Crown Corporations
16 Council. So the Legislature, having given those powers
17 to the Crown Corporation Council specifically, the PUB
18 can't take on those powers; you'd be infringing upon
19 the powers of the CCC.

20 So I'm going to move on to another
21 legislated role, which is the Board of Directors of
22 MPI. And that's, of course, in the Manitoba Public
23 Insurance Corporation Act.

24 And duties of Boards, and that's Boards
25 being the Board of Directors, the Board shall, a)

1 exercise the powers of the corporation directly or
2 indirectly through the employees and agents of the
3 corporation, and direct the management of the business
4 and affairs of the corporation, ensure the corporation
5 complies with the laws, cause the corporation to
6 conduct a review of strategic plans and its performance
7 in relation to those plans at intervals not exceeding
8 five (5) years.

9 And there's, of course, create an audit
10 committee. An audit committee has duties. 18(2) (a)
11 The audit committee shall revise -- or review and
12 advise the Board with respect to the financial
13 statements that are to be included in the annual report
14 of the corporation. And there's other duties there.
15 And finally, the audit committee can, f) perform any
16 other functions that are assigned to it by the Board
17 and the bylaws of the corporation.

18 So the jurisdiction of the PUB, again,
19 does not include the duties and responsibilities given
20 to other bodies referred to in the Crown Corporation's
21 Public Review and Accountability Act. Simply stated,
22 the Board of Directors of Manitoba Public Insurance is
23 responsible by legislation for the operation of MPIC
24 and the Crown Corporation's Council by legislation is
25 responsible for oversight of MPI. Hence, those

1 responsibilities are not within the mandate of the PUB.

2 So let's talk now about the legislative
3 role of government. Well, Crown Corporation Council
4 provides that the board of directors is responsible to
5 the Minister. So every board is responsible to the
6 member of the executive council charged by the LGC with
7 the administration of the act. Boards are responsible
8 to have -- to minister.

9 The MPIC Act also contains detailed
10 provisions with respect to the oversight and control of
11 MPI by the Manitoba Government. In particular, those
12 are all listed there, different things: Chairman of the
13 Board reports to the minister. LGC appoints the
14 chairman. LGC appoints the directors. A member of the
15 Legislative Assembly may be and historically always has
16 been a member of MPI's Board of Directors.

17 So today one (1) of the Board of
18 Directors is a member of the Legislature. The LGC can
19 designate the head office of MPI, as borrowing or
20 raising money may only be undertaken with approval of
21 the LGC. The Manitoba Department of Finance, which is
22 overseen of course by the Minister of Finance, manages
23 MPI's investment portfolio. MPI tables its annual
24 report in the Legislative Assembly. And MPI's annual
25 report is reviewed and passed by an all-party standing

1 committee on Crown corporations at a public hearing,
2 the transcripts of which are -- they're Hansard, so
3 they're available on the government's website.

4 There's a lot of forms of accountability
5 there, both political by the Minister and through the
6 opposition.

7 Let's talk about the Auditor General.
8 We don't often talk about the Auditor General at these
9 hearings. But the Auditor General of Manitoba has a
10 significant role in the oversight of MPI, which perhaps
11 you might not be aware of. So look to Section 14 of
12 the Auditor General Act, and you can see that in
13 carrying out his or her responsibilities the AG may
14 examine and audit the operations of a government
15 organization with regard to any of the following
16 matters.

17 A) Whether financial and administrative
18 provisions of Acts, regulations, policies and
19 directives have been complied with,

20 And B) Whether public money has been
21 expended with proper regard for economy and efficiency.

22 Whether the Assembly has been provided
23 with appropriate accountability.

24 And the form and content of the
25 financial information.

1 And then of course they provide a report
2 to the Legislative Assembly.

3 What the PUB and others might not know,
4 or appreciate, is that the Auditor General recently has
5 undertaken a very, very detailed audit of the system
6 and practices of MPI in administering the Personal
7 Injury Protection Plan, and they issued a report to the
8 Legislature in 2012.

9 The Auditor General spent more than a
10 year on that report. They spent a massive amount of
11 time at MPI gathering massive amounts of information,
12 completely understanding MPI's PIPP program, and of
13 course the bodily injury program. It's one (1) of the
14 two (2) things MPI does. They pay out bodily injury
15 claims and pay out physical damage claims.

16 So you go back to the legislation, and
17 you look at a) whether the Act is being adhered --
18 complied with in regs, and whether public money has
19 been expended with proper regard for economy and
20 efficiency. The Auditor General just did a huge study
21 on MPI on one (1) of its two (2) major lines of
22 coverage.

23 So within all of that context -- and
24 what is the legislative role of the PUB, vis-a-vis MPI.
25 So we get to Section 26 of the Crown Corporation's

1 Public Review and Accountability Act, and I've put it
2 down there of course, and others have made reference to
3 it but:

4 "Rates for services provided by MPI
5 shall be reviewed by the PUB, and no
6 change in rates for services shall be
7 made and no new rates for services
8 shall be introduced without the
9 approval of the PUB."

10 It's not a lot there. Rates for
11 services; well, rate basis and premiums charged with
12 respect to compulsory driver and vehicle insurance.
13 There's no other legislative provisions granting the
14 PUB any authority over any other aspect of MPI. And
15 I'll deal with the factors that the PUB can consider
16 later. But that's it. That's the PUB's whole role
17 right there in the legislation.

18 So now I'm going to undertake an
19 analysis of the legislative roles. So you're looking
20 at the Court of Appeal in the stated case 2011.

21 "The mandate of the PUB in the
22 context of this case is set out in
23 Section 26 of the Act, that being to
24 review and approve MPI's rate basis
25 and premiums charged with respect to

1 compulsory driver and vehicle
2 insurance."

3 That's what they said. So the -- really
4 there's two (2) fundamental questions that arise from
5 this statement. So what is meant by, "to review and
6 approve," and how does the PUB review and approve?

7 I'll go down to one of the earlier
8 cases, and that's 1995, and CMMG, which Mr. Oakes
9 mentioned that he brought forward, and I can state that
10 I was an articling student on this Court of Appeal at
11 the time and remember it, too. But in rendering its
12 decision, the -- the Court of Appeal dismissed the
13 appeal and said:

14 "The PUB could approve a rate
15 different from that proposed by MPI."

16 And that's what I talked about earlier
17 on. You know, the 6.8 percent. Instead of getting a
18 6.8 percent rate decrease, the PUB increased the amount
19 of the rate decrease to 8 percent. And there's many,
20 many examples over the years. Absolutely within the
21 purview of the PUB.

22 The Court of Appeal then talks about the
23 role of the Lieutenant Governor in Council as the body
24 responsible for fixing rates is not without
25 significance to the first issue before us. It explains

1 why, under section 26 of the Act, the function of the
2 Board is to review and -- there is -- is review and
3 approval. The Board is not given actual power to
4 determine what the new rates shall be, as that power,
5 limited as it is to fixing rates approved by the Board,
6 is conferred on by the LGC.

7 So Section 44 of the PUB Act says:

8 "Upon any application to it, the
9 Board may make an order granting the
10 whole or part of the application and
11 may grant further or other relief."

12 So the PUB Act even says there, Gosh,
13 you know what, you can grant all of that rate increase
14 that we're requesting, the, you know, 2.1 percent and
15 the 1 percent this year, or you can grant part of it,
16 or you can do something different. So you could give
17 us, you know, a 5 percent rate increase or, conversely,
18 you could give us a -- say no -- no change in rates at
19 zero. That's within the purview of the PUB.

20 And I'd like to skip down to the line
21 that's half -- sorry, two-thirds (2/3s) of the way
22 through paragraph 22. Why don't I just pull it all the
23 way up to the top and then that would work the best.
24 So there we go.

25 In -- in my view, the Legislature, in

1 using the term -- the word "relief", intended to confer
2 upon the Board a power to approve a rate which would
3 alleviate the burden on the Corporation of taking too
4 little in premiums to justify taking the risks inherent
5 in a particular class of insurance.

6 So that's what the Court of Appeal is
7 thinking, of what is in the power of approving rates?
8 Okay. You've got to match them to the risks inherent.
9 You got to take the right amount of premiums to match
10 them to the risks inherent in a particular class of
11 insurance. You know, power or review would make no
12 sense if the Board could only approve or reject an
13 application to fix a rate. So that's -- fine.

14 To get to the second question of: How
15 does the PUB review and approve rate bases? So that's
16 where we talked about PUBs conducting a public hearing.
17 Well, we do that every October, and that's to review
18 the rates for services. At this hearing, well, what's
19 -- what's the scope? Well, the PUB's guided by
20 Sections 26(4) and (5) of the Crown Corporations Act.
21 So we've got -- got those sections there.

22 And I would like to point out in
23 particular Sections (v) -- or sorry, Sections (viii)
24 and (ix). And these have been pointed out by Mr.
25 Williams. But any compelling policy considerations

1 that the Board considers relevant to the matter.

2 So it's not just any compelling policy
3 considerations; it has to be relevant to the matter.

4 What's relevant to the matter? The matter is rates.

5 The same thing. And we'll talk about relevancy later,
6 but the same thing, any other factors that the Board
7 considers relevant to the matter. It has to be
8 relevant to the rates.

9

10 (BRIEF PAUSE)

11

12 MS. KATHY KALINOWSKY: So we've got
13 another case here which is Consumers Association again,
14 which Mr. Williams referred to. I'd like to bring up
15 this page -- paragraph 63:

16 "The intent of the legislation is to
17 approve rate -- fair rates, taking
18 into account such considerations as
19 cost and policy, or otherwise as the
20 PUB deems appropriate. Rate approval
21 involves balancing the interests of
22 multiple consumer groups with those
23 of the utility. The PUB's decision
24 to re -- to build retained earnings
25 more rapidly than proposed in order

1 to better protect the utility and
2 consumers from the financial impact
3 of future drought, clearly meets the
4 intend of the le -- legislation and
5 is within the jurisdiction afforded
6 the PUB."

7 So there you go. PUB can figure out the
8 -- the rapidity and how retained earnings are to be
9 built. They can do it for Hydro. They can do it for
10 MPI. And that's what we're asking you with a 1 percent
11 for the RSR. So if the PUB thinks that 1 percent isn't
12 enough, the PUB is -- absolutely can provide a -- can
13 provide an order, say 2 percent, 3 percent, or more, or
14 less. That's within the purview of the PUB.

15

16 (BRIEF PAUSE)

17

18 MS. KATHY KALINOWSKY: So is paragraph
19 64:

20 "The role of the PUB under the
21 Accountability Act is not only to
22 protect consumers from unreasonable
23 charges [absolutely], but also to
24 make -- to ensure the fiscal health -
25 -"

1 It says "of Hydro," but it should be of
2 Basic keeping in line with the stated case, but:

3 "Ensure the fin -- fiscal health of
4 Basic. It is clear the PUB
5 understood its role in this regard."

6 Absolutely. Don't want to have
7 unreasonable charges, don't wan to have unreasonable
8 rates, don't want to have unjust rates. Want rates
9 that are fair and equitable, want rates that are just
10 and reasonable. Of course.

11 So when all the arguments of the
12 applicants are considered in light of the evidence the
13 PUB heard and the decision it eventually made, I'm not
14 convinced that what the applicants are complaining
15 about is anything but the methodology the PUB utilized
16 to arrive at that decision, and that was how fast you
17 rebuild the retained earnings. You might not like it,
18 but that's within the PUB's decision as to how fast you
19 can rebuild the retained earnings.

20

21 (BRIEF PAUSE)

22

23 MS. KATHY KALINOWSKY: The -- what I
24 would say is the most important case decided by the
25 Court of Appeal in Manitoba regarding the PUB doesn't

1 deal with Manitoba Public Insurance, but rather
2 Manitoba Hydro. It goes back to 1989. And this is a
3 stated case, and it was done at the absolute first --
4 to my understanding it was done at the absolute first
5 hearing that the PUB gave on MPI -- or, sorry, on
6 Manitoba Hydro when the Crown Corporation's Public
7 Review and Accountability Act was first legislated and
8 applied.

9 So the predecessor of Mr. Williams, Mr.
10 Peltz, representing at that time the Manitoba Society
11 of Seniors and the Consumer's Association of Canada,
12 brought forward a stated case to the Court of Appeal.
13 And the stated case had a particular question: Does
14 the PUB have the jurisdiction to approve, reject, or
15 vary Manitoba Hydro capital project plans, such as
16 plans to construct new generating stations, incidental
17 to, or as a condition of granting approval for changes
18 in prices charged for power?

19 So it's really the same question today,
20 just changed some of the words. Does the PUB have
21 jurisdiction to approve, reject, or vary Manitoba
22 Public Insurance's capital project plans, operating
23 costs, plans for compensation, incidental to, or as a
24 condition of granting approval for changes in the
25 prices charged for power? Think of it that way.

1 That's what we're dealing with today.

2 This is the most important case. It's
3 the first case of the Court of Appeal looking at what
4 is going to be the regulatory regime for the Public
5 Utilities Board for Manitoba Hydro and MPIC, these two
6 (2) new Crowns that the PUB has just been granted
7 authority to approve rates for. So I'm going to read a
8 fair bit from this test case. And:

9 "It is agreed by all counsel that the
10 Act in question grants no specific
11 power to the Board."

12 In other words, the legislation is
13 silent on that issue. However, Mr. Peltz, that's
14 Consumer's Association and Society of Seniors'
15 solicitor alleges that:

16 "The practical reality is that
17 capital plans and expenditures cannot
18 be ignored in any workable system of
19 rate review. And if specific
20 legislation is not available then the
21 court should, of necessity, imply
22 such power in the Board."

23 Mr. Williams isn't doing that overtly,
24 like Mr. Peltz did, but Mr. Williams and the others are
25 doing that by virtue of these motions. They're trying

1 to imply such a power in the Board.

2 The Court of Appeal says:

3 "I am unable to imply such an
4 intention in the legislation as it
5 stands. To imply it would be to
6 legislate, which is not the function
7 of this court. Since legislation is
8 defective in that the power is not
9 specifically stated, the Board and/or
10 parties will have to knock at the
11 Legislature's door in order to obtain
12 that specific power if desirable.
13 On the basis of the legislation as it
14 stands, the Board has no jurisdiction
15 to approve, reject, or vary Manitoba
16 Hydro's major capital projects, such
17 as construction of new generating
18 power stations or transmission
19 lines."

20 And there has been no change to Section
21 26 since that time other than, I believe, MTS was
22 regulated under that section at one point and is no
23 longer. But other than that, there's been no change to
24 that legislation.

25 So think about what the PUB just did

1 very recently with respect to the NFAT, or the Needs
2 For And Alternatives To Review. That was a review of
3 Hydro's proposed deferred development plan. But the
4 authority conduct that review was by order in council.
5 And it's made pursuant to Section 107(b) of the PU --
6 PUB Act, which states:

7 "The Board may perform duties
8 assigned to it by order of the LGC,
9 so far it is applicable, applies to
10 carrying out the duties so assigned."

11 There is no -- so the NFAT review of
12 Manitoba Hydro's major capital project was not done
13 within Section 26 of the Crown Corporation Public
14 Review and Accountability Act. Ins -- instead, it was
15 a specific task assigned to it by government pursuant
16 to the PUB Act. The government has made no such order
17 for MPI in regards to any type of strategic planning,
18 any type of capital or operating review to be
19 undertaken by the PUB.

20 So I'm going to give you an example here
21 of the -- the interplay of the legislative roles of the
22 various different entities.

23 So if the Crown Corporations Council or
24 the Auditor General, one day, to -- were to come to MPI
25 and were to instruct MPI to set certain Basic rates,

1 then MPI would say -- you'd have to advise them, You
2 know what, guys, proving Basic rates, that's the domain
3 of the PUB. Sorry, you might be interested in the
4 rates, you might have different opinions in rates that
5 the PUB is going to approve, but that's their
6 jurisdiction.

7 So, conversely, when the PUB is
8 examining the operational efficiency or is indeed
9 reviewing capital projects of the corporation, like the
10 physical damage re-engineering project, then MPI has to
11 advise the PUB that, with all due respect, there are
12 other entities in government that are charged
13 specifically by the legislation to do that.

14

15 (BRIEF PAUSE)

16

17 MS. KATHY KALINOWSKY: Talk about
18 ensuring necessary and prudent costs. And I'll have to
19 submit again to the PUB that it is not the role of the
20 PUB. CAC has cited PUB Order 5-12 from the Manitoba
21 Hydro GRA on the Board's rule, and they're the five (5)
22 points there. And Mr. Williams made a lot of those
23 five (5) points and said that there's a fatal flaw.
24 There is no fatal flaw.

25 PUB's role, ensure that -- well, put --

1 MPI's forecasts are reasonably reliable. Absolutely.
2 Five hundred and fifty (550) questions looking at -- in
3 which a large number of those questions are about the
4 financial forecasts.

5 I'll skip over that one -- the next one
6 and go on to assessing the reasonable revenue needs of
7 the corporation. In the context of the overall general
8 health, it says, "Of Manitoba Hydro." And I'd strike
9 out, "Manitoba Hydro," and say, Of MPI's Basic line of
10 business. Absolutely.

11 Determining an appropriate allocation of
12 costs between classes. Every question on cost
13 allocation has been answered. We've had massive
14 amounts of time spent on the cost allocation studies in
15 past hearings.

16 And finally: The setting just and
17 reasonable rates in accordance with statutory
18 objectives. Setting just and reasonable rates, of
19 course. We don't want you to set unjust rates. We
20 don't want you to set unreasonable rates. Rates that
21 can be fair, rates that can be equitable. And fine.

22 Just and reasonable rates, in the usual
23 realm of regulation and in other entities and other
24 provinces, other states in the United States, there's
25 just and reasonable rates. And Mr. Williams provided a

1 whole bunch of instances of just and reasonable rates.
2 Absolutely. What he didn't provide is all the sections
3 that follow that and it is incredibly prescriptive form
4 of regulation for what is this rate-based rate of
5 return cost of service regulation.

6 There's -- especially in the American
7 judg -- jurisdictions, probably a hundred pages in the
8 regulation on how to do that -- or, sorry, in the Act.
9 So American acts and American legislation is incredibly
10 prescriptive. That wasn't provided. It's a totally
11 different model, and that gets back to the point of
12 this is a made-in-Manitoba solution. So, yes, just and
13 reasonable rates, of course. We want them just and
14 reasonable. Use any type of adjectives. Fair and
15 equitable happens to have just and reasonable in the
16 Act, so of course we agree.

17 Let's get back to this ensuring that
18 actual and projected costs incurred are necessary and
19 prudent. And this is where MPI will take a different
20 position than what the PUB has in the past, because MPI
21 very respectfully considers that actually the PUB
22 erred. So it made an error in indicating its role is
23 to ensure actual and projected costs incurred are
24 necessary and prudent.

25 As we've set out in great length this is

1 the role of other government entities who have
2 responsibility over MPI. And MPI itself, whether
3 through management, whether through its board of
4 directors, or the Minister, and, of course, the other
5 government entities, the Crown Corporations Council,
6 Officer of the Auditor General, Standing Committee at
7 the legislature. Absolutely nowhere in any legislation
8 is this power, the power being to ensure costs incurred
9 are necessary and prudent, is this power granted or
10 even implied to the PUB.

11 And let's get back to that case that we
12 talked about, which was the first case of the Court of
13 Appeal, that stated case on Manitoba Hydro. Can Hydro
14 approve capital plans? Well, what was Hydro doing?
15 They -- they were -- or what was the Consumers'
16 Association seeking for MPI, or for -- sorry, what was
17 the Consumers' Association seeking that the PUB would
18 do?

19 That it would try and determine whether
20 the costs incurred with the construction of capital
21 projects like dams and major transmission lines were
22 necessary and prudent. And the Court of Appeal said,
23 No, I can't read that in. So that is not part of the
24 PUB's jurisdiction.

25 So if the PUB considers its role is to

1 ensure costs are necessary and prudent then MPI, with
2 all due respect, views the PUB as having rewritten the
3 legislation. You've rewritten the direct -- direction
4 that the government has provided you. And you've
5 rewritten the boundaries of the legislative framework
6 governing MPI.

7 And in so doing, PUB then trenches upon
8 the statutory authority of these other bodies, of the
9 other legislated entities and is in effect second-
10 guessing their decisions, second-guessing their powers
11 and their exercise. That's not the intention nor
12 effect of the legislation in any way, shape, or form.

13 MS. CANDACE GRAMMOND: Madam Chairman,
14 just before Ms. Kalinowsky proceeds with this next
15 section, I'm noting the time and thinking perhaps this
16 would be a good time to take lunch, just since she is
17 going into her third issue.

18 MS. KATHY KALINOWSKY: I would prefer
19 to finish, but of course I'm -- would like to hear what
20 the Intervenors and, of course, at -- whatever the
21 discretion and instructions are from the Board.

22 MR. BYRON WILLIAMS: Just in terms of
23 the advice of the CAC (Manitoba), certainly it -- it's
24 up to the Board and their attention limit and
25 everything else. Just as a matter of courtesy, if I

1 were counsel in the midst of an argument I'd prefer to
2 finish. But I just -- so from our perspective, we
3 certainly have no objection for MPI finishing its
4 argument, but again, it's your -- your choice. And
5 certainly fatigue levels or hunger levels may -- may
6 intrude.

7 MS. CANDACE GRAMMOND: Certainly, Madam
8 Chair. It's in the -- up to the Board, but I -- I note
9 Ms. Kalinowsky's just over halfway through her
10 submissions. So that may be a factor as well as to how
11 much longer she may be. And of course, we don't want
12 to rush her.

13

14 (BRIEF PAUSE)

15

16 THE CHAIRPERSON: Sorry. Thank you.
17 Ms. Kalinowsky, I just got advice from the rest of the
18 panel, and we have decided that we'll let you continue
19 your argument at this time.

20 MS. KATHY KALINOWSKY: Thank you. So
21 I'd like to talk about the law of relevancy for the PUB
22 rate hearing. And of course, the legislation is any
23 compelling policy considerations that the Board
24 considers relevant to the matter and any other factors
25 that the Board considers relevant to the matter.

1 So a proper interpretation of relevancy
2 does not provide the PUB with broad powers that go
3 beyond the scope of the specified provisions that exist
4 in the legislation or, indeed, that belong to another
5 body of government. And of course, these items must be
6 relevant to the matter.

7 The evidence sought to be reviewed in
8 these Information Requests must be relevant to the
9 mandate of the PUB; namely, setting rates. So we can
10 go through Macaul -- Macaulay and Sprague, Practice and
11 Procedure Before Administrative Tribunals, and
12 relevance.

13 So the information which is offered must
14 be capable, assuming that it were true, of logically
15 establishing some fact which an agency, or the PUB in
16 this case, needs in order to accomplish its mandate.

17 When evidence is admitted in a
18 proceeding, the agency is saying that it is capable of
19 logically prov -- proving the existence of some fact or
20 matter which has to be established -- has to be
21 established -- in order for the agency to perform its
22 statutory mandate.

23 There's a -- a case that was -- I found
24 to be quite persuasive, and it's from the Ontario Court
25 of Appeal, and it's in a public inquiry with regards to

1 the OPP. And it's by Mr. Justice Moldaver, who is now
2 on the Supreme Court of Canada.

3 And he spends a lot of time discussing
4 what -- that the relevance must be reasonable, or
5 reasonably relevant. So in deciding whether evidence
6 is reasonably relevant, it is necessary to scrutinize
7 carefully the subject matter of the inquiry -- so in
8 this case, the rate hearing -- as set forth -- in that
9 case it was an OIC. So in this case it would be the
10 legislation. That's the government document, so the
11 three (3) pieces of legislation.

12 So Mr. Justice Moldaver said:

13 "No def -- no deference is owed to
14 the Commissioner on the issue of the
15 definition of the subject matter of
16 the inquiry. The Commissioner's
17 jurisdiction is limited to the
18 subject matter which is prescribed by
19 the legislature."

20 In that case, in the OIC, creating the
21 commission; in this case, in those three (3) Acts.

22 "If the Commissioner defines the
23 subject mo -- matter too broadly or
24 too narrowly, he or she will have
25 rewritten -- the OIC will have

1 Failed to construe a wording used
2 harmoniously in the OIC -- so, in other words, is the
3 PUB, if it orders and compels all of these Information
4 Requests to be responded to, is it in fact not reading
5 the other pieces of legislation harmoniously?

6 And then, if you commit the first three
7 (3) errors, then, in that case, the Commissioner
8 misidentified the subject matter of the inquiry and
9 ascribed to himself a mandate that is beyond anything
10 contemplated by the legislature. So that's an error.
11 And that's a jurisdictional error.

12 So in determining the factors taken to
13 consideration in approving the rates the PUB has to be
14 really careful that it doesn't commit any of the above
15 four (4) errors in deciding what information it needs
16 to fulfill its mandate. It's crucially important to
17 note that the PUB cannot expand its jurisdiction by
18 making declarations of relevance, which is, in essence,
19 what CAC and CMMG and now ARM are asking for through
20 their motions.

21 Self-declarations of relevance do not
22 expand jurisdiction. Rather, the jurisdiction as
23 prescribed by the legislation provides the box into
24 which relevance must fit. If you've been given the
25 parameters you've got to get relevance within those

1 parameters.

2 The -- the Board; i.e., the PUB, cannot
3 effectively expand the scope of its jurisdiction by
4 applying an unreasonable approach to the concept of
5 relevance, a factor that objectively viewed -- reviewed
6 has no relevance to the matter that PUB must decide
7 cannot be swept into the PUB's jurisdictional reach
8 merely because the PUB claims it to be a relevant
9 factor.

10 So although Section 26 of the CCC -- of
11 the CCAA empowers the PUB to take into consideration
12 any other factors that the Board considers relevant,
13 the PUB does not have unlimited authority to determine
14 the scope of its own jurisdiction. The matter has to -
15 - referred to is the approval of rates.

16 So respectfully, the PUB's mandate
17 cannot be read as broadly as CAC and the others suggest
18 in their briefs, allowing it to rewrite the boundaries
19 of the legislative framework governing MPI.

20 Moreover, the PUB's authority to
21 consider policy considerations and other factors it
22 considers relevant to the matter cannot be construed as
23 authority to reverse a property enacted legislative
24 scheme that the Government of Manitoba has prescribed.

25 I can address CAC's common law cases on

1 relevancy, and I've -- I've done that already, I
2 believe. Mr. Williams gave a vast expose and
3 interesting description of the regulatory framework
4 that exists for most of North America. And he was
5 accurate, I believe, on those -- those counts, et
6 cetera.

7 But there is such a juxtaposition
8 between that regulatory framework that's prescribed by
9 that kind of legislation, which is this rate-base rate
10 of return cost of service model versus what exists in
11 section 26 of the Crown Corporations Public Review and
12 Accountability Act.

13 So when he talks about these ATCO case,
14 and I can't remember whether it was the Supreme Court
15 or Court of Appeal, but it's an ATCO case, it deals
16 with the Gas Utilities Act of Alberta. That's a very,
17 very, very different act from the Crown Corporation's
18 section 26. There are huge, massive pages and pages of
19 what the -- what the -- I can't even remember what the
20 regulator is called in Alberta now, but the AEUB or
21 something of that nature, but the Alberta regulator can
22 do and has to do; approves depreciation, approves this,
23 that, and the other thing. It's all laid out there and
24 has the power of disallowance, sets the rate of return,
25 et cetera.

1 None of that exists under section 26, so
2 I just don't find those cases in any way to be
3 persuasive or relevant. It's a different regulatory
4 model. I would urge the PUB to not place any weight on
5 that. And I have said before and I said right at the
6 outset of a hearing, that if we had that type of
7 regulation, then we wouldn't be here today because we'd
8 be answering just about every one of those questions;
9 this wouldn't be relevant.

10 So moving along here, the application of
11 the law to this GRA. So I'm not going to go through
12 all of the different IRs that were -- that MPI declined
13 to respond to. Instead, I've grouped them into
14 different areas.

15 But first, the question that the PUB has
16 to look at is, Are the rates reasonable? Are the rates
17 fair? Are the rates equitable? Choose any one (1) of
18 a number of adjectives, okay.

19 So although that question on its face is
20 very, very broad, it is to be interpreted within the
21 scope of the PUB's legislation. MPI has developed,
22 with the input of the PUB, and with the input of the
23 Intervenors over many, many years, this rate-making
24 methodology. It's been approved by the PUB. It's in
25 current use. The PUB has said in the past that it's

1 well-established, thoroughly tested at the annual rate
2 hearings, and actuarially sound and statistically
3 driven.

4 The rate-making methodology has two (2)
5 objectives, determine the overall costs expected to
6 arrive -- rise during a given policy period, and
7 allocate those expected overall costs equitably amongst
8 insured with the expected cost to the insured being the
9 rate they are required to pay.

10 So MPI's rate-making methodology is
11 based on actuarial principles, and ties directly to the
12 costs, thereby assuring equity. It minimizes cross-
13 subsidization between the customers and the classes,
14 and provides for rates that are responsive to changes
15 in claims patterns. It ensures complete enumeration of
16 expected costs, allowing for assurance that the break-
17 even target is achieved.

18 So responses were provided to every
19 Information Request on rate-making and rates for the
20 2015 rate application. Responses were provided for all
21 Information Requests in respect of financial
22 projections of expenses and revenues, and answers were
23 provided on everything to deal with actuarial
24 modelling.

25 All other information is considered by

1 MPI to be for the purposes of an operational review,
2 respectfully, or an audit, and have been declined by
3 MPI to be answered as not consistent with the mandate
4 of the PUB, and is, in fact, under the jurisdiction of
5 a different government entity, and I've set those out.
6 Those are the Crown Corporations Council. It's the
7 minister. It's the office of the attorney general.
8 It's standing committee in the opposition in
9 legislature -- legislature.

10 So we've categorized the Information
11 Requests into the following areas. So let's talk about
12 road safety. So very respectfully, the legislature has
13 not granted the PUB jurisdiction to conduct an overall
14 review or an audit, or to critically evaluate any
15 aspects of MPI's road safety program.

16 Instead, the legislature, via Section
17 6(1) and 6(2) of the Crown Corporations Act conferred
18 jurisdiction to the Crown Corporations counsel to
19 review these matters. Similarly, the auditor general
20 under its Act is charged with conducting operational
21 reviews and audits, and could undertake a review of
22 MPI's road safety program, including its efficiency,
23 effectiveness, and critical evaluation.

24 It's the Board of Directors of MPI and
25 the government of Manitoba that have the authority to

1 provide the direction and review of MPI's road safety
2 initiatives. Whether MPI plans to proceed with road
3 safety program A, B, or C, or no programs at all, is a
4 business decision of MPI, subject to those other forms
5 of accountability.

6 The jurisdiction to make that decision
7 belongs to MPI pursuant to sub -- to Sections 13(1) of
8 the Crown Corporations Act as part of, Direct the
9 management of the business and affairs of the
10 Corporation, and Section 6(2) of the MPIC Act which
11 I've cited earlier on.

12

13 (BRIEF PAUSE)

14

15 MS. KATHY KALINOWSKY: The power
16 conferred to approve Basic rates does not provide the
17 PUB with the power to compel MPI to produce the wide-
18 ranging information on road safety sought in the
19 Information Requests of, I believe, all parties and the
20 PUB that MPI has declined to respond to.

21 So merely alleging that ratepayers fund
22 the road safety program through their rates does not
23 give rise to a wholesale review of this expenditure,
24 just like the fact that the ratepayers would be paying
25 for the dams at Manitoba Hydro and the transmission

1 lines does not give rise to a wholesale review of
2 approving the dams. This information is not relevant
3 to the matter of setting rates.

4 But there are aspects of road safety
5 that, of course, can be relevant to the PUB for
6 approving rates. So the 2015/'16 budgeted amount of
7 the Road Safety Program. It's relevant because MPI
8 seeks to recover those rates and rates those
9 expenditures. MPI has provided to those types of
10 Information Requests on road safety. The expenditures
11 and their nature included in the budgeted amounts are
12 relevant for the purposes of ensuring that all the
13 components of the budget are for compulsory driver and
14 vehicle insurance. MPI has responded to these
15 Information Requests.

16 Let's move to benchmarking. Again, the
17 Crown Corporations Council does not grant any specific
18 power to the PUB to assess benchmarking. The Crown
19 Corporations Council Act -- or, sorry, the Crown
20 Corporation's Public Review and Accountability Act
21 does, however, specifically state in Section 6(1b)
22 that:

23 "The Crown Corporations Council shall
24 facilitate the development of
25 consistent and effective criteria for

1 measuring the Corporation's
2 performance."

3 Of course, benchmarking is utilized as a
4 major tool to measure and assess corporate performance.
5 The power conferred to approve Basic rates does not
6 provide the PUB with the power to compel MPI to produce
7 the wide-ranging information on benchmarking sought in
8 the Information Requests not responded to.

9 So generally speaking, Information
10 Requests about benchmarking are beyond the mandate of
11 the PUB, not relevant to the issue to be decided and
12 resolved. However, specific questions on benchmarking
13 of rates may be relevant. New and enhanced services
14 being developed or examined by MPI. Again, the quote
15 at the Court of Appeal from that 1989 case of the Hydro
16 dams. The same thing. It's not within -- or, sorry,
17 that's not the case.

18 This is the -- the other stated case
19 from the Court of Appeal from 2011. The Court of
20 Appeal, very clear. This is an issue for government,
21 not for the PUB with respect of plans and services
22 developed and examined.

23 IT projects of it -- IT projects,
24 physical damage, re-engineering, reviewing MPI's cost
25 containment initiatives relative to recycled parts,

1 suggesting improvements in reducing physical damage
2 repair costs.

3 Well, again, respectfully, the PUB has
4 not been granted the jurisdiction to review decisions
5 related to IT projects, or PD re-engineering project.
6 These IT projects are very capital intensive. Again,
7 look at the same type of subject -- or the same type of
8 arguments that were used and the findings that were
9 used by the Court of Appeal with respect to the stated
10 case relating to the Manitoba Hydro dams:

11 "The Board has no jurisdiction to
12 approve, reject, or vary Manitoba's -
13 - Hydro's major capital projects,
14 such as construction of new
15 generating power stations or
16 transmission lines. I am unable to
17 imply such an intention in the
18 legislation as it stands. To imply
19 it would be to legislate, which is
20 not the function of this court. I
21 would also say that to imply it is
22 not the function of the Public
23 Utilities Board, with all due
24 respect."

25 Again, merely alleging that ratepayers

1 will fund the IT and PDR projects does not give rise to
2 a wholesale review of these projects through the rate-
3 making process. Of course, there are questions that
4 we've responded to on IT, so the budgeted amount of IT
5 projects, the expenditures of their nature to ensure
6 that all of the components are a part of the compulsory
7 driver and vehicle insurance.

8 With respect to questions on the details
9 of the operations of the Corporation, the same argument
10 for road safety above in -- I won't belabour that any
11 more.

12 Investment portfolio. Investment --
13 Information Requests related to the forecasted
14 performance of the investment portfolio are very
15 relevant to the PUB. Absolutely, because the rate
16 application assumes income will be generated from the
17 investment portfolio.

18 So MPI responded to, because you have to
19 be able to determine whether projected income forecasts
20 are reasonable. You have to be able to set the rates.
21 Are we going to have investment income of \$100 million?
22 Are we going to investment min -- income of \$50
23 million, \$150 million, or \$4 million? All of those
24 figures are true over the past number of years. We got
25 to figure out whether that's absolutely reasonable,

1 because if we haven't put in something reasonable in
2 terms of the investment forecast, the rates are either
3 going to be excessive, i.e., they'll be unjust and
4 unreasonable to the consumers, or they'll be deficient,
5 which, again, doesn't benefit the consumers in the long
6 run.

7 But Information Requests on decisions to
8 invest, what I call the when, what, why, or how, are
9 beyond the mandate of the PUB, recognizing that the
10 management of the investment portfolio is the
11 responsibility of the Minister of Finance.

12 So Information Requests regarding
13 historical information also are not used to forecast
14 future investment income, because it's irrelevant to
15 the 2015 rates. It's really important that if another
16 government body is charged with doing something, like
17 the Minister of Finance investing, it is not the role
18 of the PUB to second guess the Minister of Finance.
19 You can second guess MPI on their forecast, but not on
20 the Minister of Finance's decisions to invest in such
21 and such a stock at such and such a time or hire this
22 equity manager or invest in such a bond at such an
23 amount.

24 So I'm getting to my conclusion now. So
25 if the PUB issues an order compelling MPI to produce

1 full and adequate responses to all the First Round
2 Information Requests of CAC and PUB, and also I can add
3 CMMG and the ARM, and can likely add, although they're
4 not part of this motion, but the Bike Winnipeg
5 Information Requests, then it is respectfully submitted
6 that PUB will err in making an order which is beyond
7 its statutory mandate.

8 The PUB's jurisdiction is limited to
9 reviewing and approving proposed changes to rates for
10 compulsory driver and automobile insurance, and that's
11 -- that's the specific line, in that you can recognize
12 that wording now from the Court of Appeal.

13 The PUB's mandate is to ensure that
14 MPI's rates are sufficient to satisfy the costs of
15 Basic, including any reserve, or, in other words, that
16 the rates are actuarially sound and statistic --
17 statistically driven. This mandate cannot be read as
18 broadly as CAC and others suggest in their brief,
19 allowing it to rewrite the boundaries of the
20 legislative framework governing MPI.

21 Moreover, the PUB's authority to
22 consider policy considerations and other factors it
23 considers relevant to the matter cannot be construed as
24 authority to reverse a properly enacted legislative
25 scheme of government.

1 So finally, and the effect of responding
2 to all the IRs posed, presuming the PUB considered them
3 relevant for rate-setting purposes, would be to trench
4 upon the statutory authority of the other government
5 entities, as per legislation, so the Crown Corporations
6 Council, the Board of Directors, the Government of
7 Manitoba, and the auditor general, and, in effect,
8 second guessing their decision and their exercise of
9 powers.

10 If the PUB were to compel MPI to respond
11 to the IRs, then it would appear that the PUB's
12 perception of its jurisdiction suggests that the
13 legislature has displaced the role of the Manitoba
14 government in overseeing MPI and providing the PUB with
15 an unchecked and unlimited scope of review. Such a
16 broad scope of review is inconsistent with all the
17 legislation.

18 This legislative scheme provides for a
19 very complex system of checks and balances, lots of
20 checks, lots of balances, I've gone through those,
21 which provided that the Manitoba Government is
22 ultimately responsible for MPI's financial well-being
23 and for the insurance plans, programs, and services
24 that MPI administers for the government.

25 So although the Crown Corporations

1 Section 26 of that Act empowers the PUB to take into
2 consideration any other factors that the Board
3 considers relevant to this matter, I will submit that
4 the PUB does not have unlimited wide authority to
5 determine the scope of its own jurisdiction. The
6 matter referred to is the approval of the Basic rates.

7 And I've put out what the order has
8 sought there, so MPI need not to respond to the IRs to
9 which it has already declined to respond to. MPI has
10 provided specific reasons for declining to respond to
11 the IRs. No amendments be made to the timetable, and
12 costs will be decided at the end of the 2015 GRA
13 proceedings in the various cost awards, of -- of
14 course.

15 I can say that with respect to the
16 timetable, MPI is responding to information -- is
17 working very, very hard right now to respond to the
18 Second Round of Information Requests, and those will be
19 provided with respect to the timetable as prescribed in
20 the earlier order.

21 Just wait one moment, and I'm just going
22 to see if I have any other notes that I want to follow
23 up on, please.

24

25

(BRIEF PAUSE)

1 MS. KATHY KALINOWSKY: Finally, if the
2 Board is going to make any type of an order varying the
3 timetable -- varying the timetable, I would say that
4 Mr. Williams was absolutely correct, we need the Board
5 Order by December 1st -- by December 1st. Think in
6 your mind actually November 30th is even better, and
7 that is because of -- if there is any variance in the
8 Board Order, so we've applied for 2.4 percent and a 1
9 percent. If the PUB gives something different, higher,
10 lower, slightly changed, then we have to rerun all of
11 the rates. There's over a million rates now, and
12 they're all individually done through a massive
13 computer system, but they vary by, you know, vehicle
14 class, individuals' driving experience, territory, and
15 model.

16 So that's a huge -- huge task to be
17 done. Rates are effective March 1st, but we have to
18 mail out forty-five (45) days in advance what the rates
19 are to individuals who have the renewal date on March
20 1st, so we're looking at January 15th. PUB issues its
21 one (1) order on the -- following the GRA, and then
22 issues a subsequent order on the actual rate tables
23 that it's approving if those have to be redone.

24 We also have to get cabinet approval in
25 the midst of that, because under Section 33, cabinet

1 approval is required for any changes in rates when
2 they're approved by the PUB. So we've got a lot of
3 steps in there, so we absolutely need the decision by
4 December 1st.

5 With that, I'll close. I've been
6 somewhat lengthy, but I do recognize the importance of
7 this, and I hope -- I know that's -- this is -- a lot
8 of things that I've said have been perhaps difficult
9 for the PUB to hear at times. PUB has issued a number
10 of Information Requests. Obviously, PUB thinks that
11 they're relevant. Obviously, PUB thinks that they're
12 in the mandate -- within its mandate to issue those
13 Information Requests.

14 We very respectfully disagree, and we're
15 looking forward on -- to an order that we can move on
16 and establish the appropriate regulatory regime within
17 the province of Manitoba with this made in Manitoba
18 solution.

19 So with that, thank you very much.

20 THE CHAIRPERSON: Well, I think we'll
21 just take -- do you want a question? Okay. You know -
22 - oh, just -- well, a quick clarification question, and
23 then I think we'll go for lunch.

24 MS. SUSAN PROVEN: Ms. Kalinowsky, this
25 made in Manitoba solution which you're talking about,

1 this new -- you -- I think you even called it a new
2 solution, it -- it just seems strange to me right now,
3 I -- I don't know why, because I remember 1989 when we
4 -- I sat on the panel for Manitoba Hydro, and I think
5 we had clarification from the Court of Appeal. We also
6 had our lawyer always keeping us within the bounds of
7 where we should be, focussed on the rates, not on
8 capital, none of that stuff.

9 I also remember some wonderful MPI
10 hearings where we did get excited about recycled parts.
11 It was new in those days. And also about no-fault
12 insurance, and the hearing was more than just rates.
13 It was about new ideas. So when you mentioned that box
14 into which relevance much -- must fit, I was kind of
15 surprised, because I view a hearing as sometimes
16 thinking outside a box.

17 And although we don't sometimes have the
18 ability to build that into an order, you know, if it's
19 beyond the relevance, obviously, in terms of that rate,
20 we at least have an exploration, not just for
21 ourselves, but for the public. The public is also
22 involved in a hearing, because they read about it in
23 the paper.

24 So I'm disappointed, and I guess I'm
25 wondering too today, why you would choose to give us

1 the new model when we're in the middle of a hearing.
2 It just seems rather shocking to not just myself and to
3 this Board, but obviously to all the other people
4 involved.

5 You once sat as counsel for us, so it's
6 not like you didn't have a chance then to give us the
7 new -- new model. I'm just wondering why we didn't
8 know about this new model when we first started doing
9 all this.

10 And I wasn't there in the '70s, but I
11 certainly was on this panel for the '80s, and I never
12 heard about the new model then. So I'm kind of shocked
13 that I'm hearing about it now.

14 Can you tell me a bit about why now?

15 MS. KATHY KALINOWSKY: Sure. Thank you
16 for giving me the opportunity.

17 I do have here an exhibit that I could
18 hand out. And in fact I'll ask Ms. Reichert to pass
19 this around. It has to be marked as a new exhibit
20 number. It was an exhibit that was provided in the
21 2013 pre-hearing -- 2013 GRA pre-hearing conference,
22 and it talks about the -- the number of Information
23 Requests that were provided in 1990, the GRA, which is
24 the first GRA, to the 2012 GRA. So I don't have it for
25 the last two (2) years, but, you know, I've already

1 listed the number of Information Requests in any event.

2 So back in 1990, after the difficulties
3 that MPI was in and which resulted in Crown
4 Corporations Public Review and Accountability Act, the
5 PUB setting rates, and also the Kopstein Commission
6 preceding that, if you look at the first -- this can be
7 marked as Exhibit Number 5.

8

9 --- EXHIBIT NO. MPI-5: Chart Number 4, IRs 1990
10 GRA to 2012 GRA

11

12 MR. REGIS GOSSELIN: Just a question.
13 I'm wondering why we're not seeing the data for a more
14 recent GRA?

15 MS. KATHY KALINOWSKY: I wasn't
16 planning to bring this forward. And then you raised a
17 question, Mr. Gosselin, about, Gosh, you know, a number
18 of the IRs that are -- that are asked aren't even
19 referred to later on in the GRA. And I recalled this
20 actual chart, so via BlackBerry sent a quick message
21 back to the office, got somebody to bring this forward.

22

23 (BRIEF PAUSE)

24

25 MS. KATHY KALINOWSKY: But I can say

1 that the First Round of Information Requests for the
2 2015 GRA is just nine hundred (900) and some, so just
3 shy of one thousand (1,000). And that's for the First
4 Round. So that kind of puts it in a little bit of -- a
5 little bit of a realm there.

6 And of course below -- and in Second
7 Round, there's more -- approximately around two hundred
8 (250). But that's fairly circumscribed Second Round, I
9 believe, from the Intervenors who are awaiting the
10 results of this motion.

11 And indeed, as Mr. Williams has put
12 forward, they want another round of IRs. So I'm not
13 sure what the ultimate number would be there. So you
14 can kind of track it anyways.

15 So looking at the enormous amount of
16 Information Requests -- and the chart below it has this
17 number of Information Requests compared to IRs that are
18 used in the book of documents. So blue is the number
19 of Information Requests, and then the red is -- that
20 are actually referred to in the Information Requests.

21 So it's just a visual of the question
22 that you asked to the Intervenors, and I thought this
23 could be again helpful. Sorry, I couldn't get it
24 updated, but I can certainly do that if -- undertake to
25 do that if that's important.

1 I appreciate the question that you
2 asked, Ms. Proven, about the regulatory regime in
3 Manitoba. And it's really getting back to what it's
4 supposed to be, what -- you know. Yes, it's
5 interesting to talk about road safety. Yes, it's
6 interesting to talk about recycled parts. Yes, at MPI
7 we like to brag about those things. But unless we're
8 putting something like that into our forecast -- as I
9 mentioned about the amount of recycled parts in the
10 future and so on, we just have to explain to you a
11 little bit, okay, what are recycled parts? We ans --
12 you know, provide a little bit of information, et
13 cetera, then move onto the next thing.

14 But to do a whole scale analysis amongst
15 the approximately thirty (30) questions that the ARM
16 group asked about road safe -- about recycled parts is
17 not within the purview of rates. When you look at
18 those -- and, you know, I -- I don't want to go through
19 and I don't think anybody really want to go through in
20 this hearing, but the actual like subject matter and
21 what they're seeking to do about that is, Well, you
22 guys are doing this, and how come you're not doing
23 that, and you're doing this, you're not going to do
24 that. That doesn't have anything to do with your role
25 and your mandate.

1 So the regulatory regime that MPI is now
2 doing in this -- and it also brings back a point that
3 I'd like to make with respect to Mr. Oakes. And he --
4 Mr. Oakes said, Well, why don't you bring a stated case
5 on something like this? Why are you doing it halfway
6 through?

7 The last stated case the PUB brought,
8 and it was about trying to -- whether the PUB had the
9 authority to get information from MPI with respect to
10 the non-Basic lines of business. So went to the Court
11 of Appeal. Huge hearing there. Very -- very big
12 process.

13 And the Court of Appeal at the end of
14 the day issues an order saying: Well, it's kind of
15 moot. There's nothing in -- in -- before us. Excuse
16 me.

17

18 (BRIEF PAUSE)

19

20 MS. KATHY KALINOWSKY: The Court of
21 Appeal says: There's nothing before us. So you have
22 to bring us actual, you know, questions that are real,
23 live, and relevant.

24 So we look at these four hundred (400)
25 questions that haven't been responded to, and that's

1 the type of thing that -- and indeed if any decision is
2 ultimately made by the PUB and whether we're
3 considering to -- going to the Court of Appeal or not,
4 that's the type of evidence that the Court of Appeal
5 needs. So, yes, it's a -- it's a change part way
6 through but it's a change that we thought of for that
7 kind of a role. So that's important for -- for us.

8 But this regulatory framework that the
9 PUB has been operating under, you can say that the last
10 hearing last year, I believe we spent more than three
11 (3) days talking about road safety. Had experts in
12 from the States. Had -- CAC brought in a very charming
13 expert from British Columbia who talked about road
14 safety.

15 Three (3) days. Well, you look at what
16 the Board can actually order in the end on that road
17 safety, well, you know, MPI, you know, are you spending
18 10 million, are you spending 12 million, are you
19 spending 15 million on road safety? And then there's
20 pages and pages of recommendations on road safety. It
21 -- it's not an appropriate or a good use of -- that's
22 within the mandate of the PUB.

23 It's interesting. Yeah, it's very
24 interesting. Intervenors have brought up good points
25 in the past. But it's not within the mandate of the

1 PUB with respect to establishing rates for Basic
2 insurance.

3 So, yes, this is different. It's a push
4 back, and it's a push back coming part way through the
5 process when we get nine hundred and fifty (950) IRs
6 approximately, just under a thousand IRs, and we look
7 at them and we say, You know what, four hundred (400)
8 of them aren't relevant. So hopefully that explains
9 your question.

10 MS. SUSAN PROVEN: I'd just like to say
11 that we weren't dealing with recycled parts just 'cause
12 it was fun. What we were looking for is, Can we save a
13 ratepayer some money? That's what it's all about. And
14 I think, you know, the Board has always been very
15 cognizant of the fact that we're responsible for
16 setting the best rates that we can for the individuals
17 we represent, which is the public.

18 If we can cut costs and still provide
19 safe recycled parts, then we're all about that. I
20 mean, we should be, you should be, we all should be.
21 So it's just something that I'm very interested in.
22 That's why I take the time to read a thousand intri --
23 interrogatories. I don't view it as being fun to do
24 that, but it's my job as a regulator to go through that
25 material and see if there's something we can do to make

1 it all affordable.

2 MS. KATHY KALINOWSKY: And I believe
3 I've set out, with all due respect, what the
4 Corporation believes what the mandate is of the PUB,
5 and what it needs to fulfil that mandate. And therein
6 probably lies the difference.

7 MS. SUSAN PROVEN: Right. M-hm.
8 Thanks.

9 THE CHAIRPERSON: Okay. Thank you. I
10 think we'll take time now to break for lunch. We'll
11 have questions after lunch, and Intervenors can have
12 their say then.

13 Is that okay, or --

14 MR. BYRON WILLIAMS: Absolutely, and
15 we're always at your -- I just want to indicate for
16 timing purposes, I think between the three (3)
17 Intervenors, we'll probably be in the range of twenty
18 (20) minutes or -- somewhere between twenty (20) and
19 twenty-five (25). So we don't expect to be long,
20 collectively.

21 THE CHAIRPERSON: Okay. How -- do you
22 want to -- do you want to have an abbreviated lunch,
23 like forty-five (45) minutes, or -- okay, we'll do
24 forty-five (45) minutes for lunch, and then we'll come
25 back and reconvene. Thank you.

1 --- Upon recessing at 12:57 p.m.

2 --- Upon resuming at 1:46 p.m.

3

4 THE CHAIRPERSON: Well, welcome back.

5 I hope you enjoyed your lunch. We're going to begin
6 the proceedings again, and I'm going to open it up to
7 our Board here for questions, and then we'll go the
8 Intervenors. So I'm going to start -- Mr. Gosselin,
9 would you like to --

10 MR. REGIS GOSSELIN: I have some
11 clarification questions, I guess. You identified the
12 role of the Crown Corporation Council. You -- one (1)
13 of the roles that are assigned to the council is to
14 facilitate the developmental criteria to assess the
15 Crown Corporation.

16 And I guess the question is, have they
17 actually done that? Have they actually facilitated the
18 development of criteria for MPI?

19 MS. KATHY KALINOWSKY: The Crown
20 Corporation Council prepares an annual report to --
21 sorry, annual and perhaps other reports to the -- their
22 minister that they report to, and I can't recall right
23 now who that minister is. Like, I -- he's the minister
24 of finance or minister of what was formally corporation
25 con -- consumer affairs. I'm not sure who that

1 minister is. They repair -- prepare a report and
2 reports every year, and the contents of that report are
3 confidential to the minister.

4 MR. REGIS GOSSELIN: But you didn't
5 answer my question. Have they actually facilitated the
6 criteria for MPI?

7 MS. KATHY KALINOWSKY: I am unsure as
8 to what criteria they use to compare, I'd say, MPI to
9 Liquor Lotteries and to Manitoba Hydro.

10 MR. REGIS GOSSELIN: I guess I'm -- I'm
11 profoundly troubled by the dilemma that you're causing
12 us, specifically by your argument, and -- and basically
13 what you're saying, and -- and that's been repeated in
14 the letters from Mr. Guimond, underlies -- underpins
15 all of the -- all of the arguments that you are
16 proposing to this Board.

17 Basically, you're suggesting that you're
18 only going to be looking at perspective costs and rates
19 that flow for those costs, and I guess the trouble I
20 have with that is that I know how budgeting is done in
21 most organizations, and fundamentally, the way we do it
22 is more -- what most organizations do is they start
23 with actual costs, and from there, they project future
24 costs, with a note -- notable exception of costs that
25 are for new initiatives and so on which -- basically,

1 green field kind of initiative.

2 So you start from the premise -- start
3 from the base of information you've collected on your
4 costs, and from there, you project the cost. Now,
5 you're proposing to us that we have no authority, no --
6 no way of examining whether or not the costs that are
7 the foundation of your projections can't be examined by
8 this Board.

9

10 (BRIEF PAUSE)

11

12 MS. KATHY KALINOWSKY: I can say that
13 we've answered all the questions on financial
14 forecasting of the budgets. We provide five (5) years
15 of history of the expenses, and that's in the filing.
16 We also prepare a history of what was budgeted versus
17 actual for the PUB, and we provide all of the
18 assumptions that MPI has made in terms of going forward
19 for all of the budgeting for those costs.

20 MR. REGIS GOSSELIN: Now, the Auditor
21 General is responsible for the audits of the
22 Corporation, are they -- are they not?

23 MS. KATHY KALINOWSKY: The Auditor
24 General is responsible. However, they also retain an
25 external firm which right now is Price Waterhouse

1 Cooper, who actually sign off on the financial
2 statements. The financial statements then form part of
3 the consolidated revenues of the Province of Manitoba.

4 MR. REGIS GOSSELIN: Right. And I
5 guess the -- you know, the -- the fundamental reason
6 they would do an audit is to express an opinion as to
7 the merits of that financial statement and whether or
8 not that financial statement fairly expresses the
9 condition of the Corporation and the business it's
10 conducting.

11 MS. KATHY KALINOWSKY: That's what the
12 Price Waterhouse opinion in the financial statements
13 is, correct.

14 MR. REGIS GOSSELIN: Now, are you --
15 are you suggesting that -- are you suggesting that the
16 work that we do in this room is an audit of MPI?

17 MS. KATHY KALINOWSKY: There are many
18 different types of audits. Because you're a finan --
19 an accountant, you think of the financial audit. Of
20 course, there are internal audits undertaken by our
21 internal audit department which could look at a number
22 of operational reviews.

23 I've used the word 'audit', I've used
24 the word 'operational review' at times interchangeably.
25 So, yes, to ask a lot of questions on, let's say, road

1 safety and critically -- the wording -- I don't have it
2 right here in front of me, but critically evaluating
3 and assessing road safety programs. To me, critically
4 evaluating, audit, fairly similar in that regard --

5 MR. REGIS GOSSELIN: But they're not
6 quite --

7 MS. KATHY KALINOWSKY: -- without going
8 into the technical financial audit.

9 MR. REGIS GOSSELIN: But you have to
10 admit they're not quite the same standard that they
11 have to meet. If you do an audit, my experience with
12 audits is that there are standards that are expected to
13 be met, even with audits that are not financial ones.

14 So the work that we do in this room,
15 we're not in the position to express -- we're not --
16 whether or not the information we see fairly represents
17 the information we're given, fairly represents the
18 actual situation of the Corporation. So I'm just
19 simply making the point that we are not in the business
20 of conducting audits, and we would never profess to be
21 doing that.

22 We can't get in and look at your
23 financial -- your -- your financial ex -- your own
24 expenditures. We can't go in and look at what you
25 spent for a particular vendor and so on. That's not

1 our role.

2 So I'm not -- all I'm simply doing is
3 challenging the fundamental notion that you're saying
4 that we're doing the same work that somebody else is
5 doing.

6 MS. KATHY KALINOWSKY: You're correct
7 in that the PUB isn't doing a verification. When we
8 say that rates are going to be 'X', nobody runs over
9 and watches, you know, the -- the rates coming spewing
10 out of the computer, so to speak, to see if they indeed
11 are 'X' as opposed to did we, you know, not -- not do
12 the, you know, minus 8 percent rate decrease and did we
13 actually just ignore the PUB and instead give minus 6.8
14 percent.

15 Yes, that's correct. Nobody is going a
16 verification of those things, similarly to any of the
17 material that's filed in the application. Nobody's
18 going over to look at the computers at MPI to see, Oh,
19 indeed, do -- do these actually line up with -- you
20 know, the -- the internal financial, or is it, you
21 know, a second set of books or something like that.
22 You're correct that there is no verification function.

23 MR. REGIS GOSSELIN: Last year, the
24 Board -- you -- MPI had requested an increase in Basic
25 rates of 1.8 percent, and this Board approved rates of

1 0.9 percent. Now, the decision to adjust the Board --
2 the -- the Corporation's operations based on the lower
3 approval granted by -- by this Board, the decision to -
4 - actually, the ways in which they've addressed that
5 were taken by the board of directors, weren't they?

6

7

(BRIEF PAUSE)

8

9 MS. KATHY KALINOWSKY: The board of
10 directors of the Corporation takes very, very seriously
11 any kind of order that the PUB issues. The board of
12 directors reviews it. It's sent to them. It's
13 discussed at length at the different meetings,
14 particularly at the meeting following the issuance of
15 the order. I can also say that with respect to last
16 year, the 1.8 percent and being decreased down to the
17 .9 percent with respect to op -- the largest resun --
18 reason, of course, was operating expenses that the PUB
19 believed that the operating expenses were indeed higher
20 than they should be, and that was reflected in rates.

21 And, of course, the other factor was
22 interest rates. And what you see in a result in this
23 year's application is the Corporation changing its tact
24 on interest rates. And we're just going with the five
25 (5) major banks and the Global Insight. We're not

1 doing that risk adjustment that we had done last year
2 because the PUB did not approve that. We have
3 calculating interest rates.

4 And you also see with respect to
5 operating expenses there are cost containment measures
6 and those will be coming out over the next year with
7 respect to plans that the Corporation will be
8 implementing with respa -- with respect to cost
9 containment.

10 MR. REGIS GOSSELIN: Okay. I was
11 trying to make the point that this Board does not tell
12 MPI how to run its operations. The Board decides on
13 rates, and then how you respond to a rate decision is
14 entirely within the realm of the Board of Directors of
15 MPI.

16 MS. KATHY KALINOWSKY: Agreed.

17 MR. REGIS GOSSELIN: Now, I guess the -
18 - coming back to this issue of audits. And, you know,
19 you cited the -- the example of an examination done by
20 the Auditor General of the PIPP costs. And we were --
21 you know, this was done according to what you submitted
22 to us in 2012. So they were examining costs in the
23 rearview mirror, weren't they? I mean, the costs had
24 already been spent. They were examining the costs in a
25 rearview mirror.

1 So -- so now we're close to two (2)
2 years later. Things have changed. The world has
3 changed. Costs have changed.

4 Are you suggesting that a review of
5 costs by -- of the PIPP costs done for 2012 should be
6 good enough for the Board when it comes to setting
7 rates for the current application?

8 MS. KATHY KALINOWSKY: No, I don't
9 think that's what I'm suggesting at all. I would say
10 the audit of -- and the review of the Office of the
11 Auditor General with respect to PIPP that was
12 undertaken, it looked at the operations as to how PIPP
13 is administered. It looked at the process, and it
14 looked at the costs in doing that. It looked at how
15 individuals on a personal level are being treated, how
16 they're being communicated with. It looked at all
17 different relevant aspects of the Personal Injury
18 Protection Plan. The Auditor General made extensive
19 recommendations and there's been follow-up through the
20 legis -- legislature of those recommendations.

21 MR. REGIS GOSSELIN: I'm looking at
22 your brief, page 8 of 20, specifically item 23 in the
23 middle of the page. There's a very powerful statement
24 made there which suggests that a power review, which
25 you are proposing for this Board, would make little

1 sense if the Board could only approve or reject an
2 application or fix a rate below that sought.

3 The -- the Board's function is not only
4 to protect consumers from unreasonable charges, or
5 changes rather, but also to ensure the fiscal health of
6 the Corporation in fairness. So that statement from
7 the court is pretty clear to me that we're not here to
8 simply take the application and page through, stamp it,
9 and on you go with the rate. It seems pretty clear to
10 me that there's a responsibility on this Board, based
11 on this precedent, there's a responsibility on this
12 Board to scrutinize the costs of the Corporation.

13 MS. KATHY KALINOWSKY: We agree that
14 the -- the role of the PUB is to scrutinize the
15 prospective costs of the Corporation. I would also say
16 that within the context of this quote, you have to
17 think about what this case was about. And it was that
18 -- it was right after the introduction of no-fault. To
19 the best of my knowledge, and this goes back to, you
20 know, twenty (20) years ago when I was an articling
21 student, but the Corporation applied for something, no
22 fault was introduced, the Application was revised, and
23 motorcyclists were getting a much higher rate increase.

24

25 And then the PUB, maybe Byron -- Mr.

1 Williams can help me, too, but the PUB gave something
2 different and I think it was -- it was higher even than
3 what CMMG applied for, or -- or sorry, that MPI applied
4 for, and so that went to the Court of Appeal. And CMMG
5 was arguing, Well, you can either reject or approve.
6 You can't do something different. Like, i.e., make it
7 higher. And the court there in this sentence is
8 saying:

9 "A power of review would make little
10 sense if the PUB could only approve
11 or reject an Application, or fix a
12 rate below that sought."

13 Well, yeah, they can fix a rate higher
14 which has happened in the past.

15 MR. REGIS GOSSELIN: Could you comment
16 on the next sentence?

17 MS. KATHY KALINOWSKY: Absolutely. The
18 -- the Board's function is not only to protect
19 consumers from unreasonable changes. Absolutely.
20 That's unreasonable changes in rates with regard to the
21 regul -- think of the legislation, Section 26, changes
22 in rates for service. That's what the PUB is
23 approving, so absolutely. But also to ensure the
24 fiscal health of the Corp.

25 I would say the -- ensure the physical

1 health of Basic but subject to that I -- I absolutely
2 agree with that and that's because of the more recent
3 stated case of -- that went to the Court of Appeal, and
4 fairness between different classes of consumer. So
5 that's when you look at the allocations between the
6 different classification systems.

7 So completely I agree with that. And I
8 believe that we have answered every single question
9 that deals with, you know, the fairness of the rates
10 between the different classes. So whether you're a
11 motorcyclists, whether you're all purpose, et cetera,
12 we've answered all those types of responses.

13 You have to -- we've responded to over
14 five hundred (500) questions already, and those
15 questions all deal with financial forecasting, they
16 deal with rates, they deal with rate-making, they deal
17 with actuarial modelling, they deal with -- anything
18 about the rate stabilization reserve, the DCAT, et
19 cetera. And that's in addition to over the four
20 thousand (4,000) pages in the Application, plus the
21 three thousand (3,000) on -- with respect to the DCAT
22 alone.

23 So there's a massive amount of
24 information that's there that I believe can fulfill the
25 Board's function to not only protect consumers in this

1 regards. So I think you have to start, I would
2 suggest, maybe asking yourselves, Like what do you need
3 to approve rates?

4 Ms. Proven said, Well, you know, she was
5 here in the 1990s. And it's like, Well -- okay, sorry.
6 In the 1980s then, and you think about the Applications
7 in the '80s. Sorry, I was here in the 1990s along with
8 Mr. Williams and Mr. Oakes.

9 But, you know, the Applications were
10 petty darn thin back then. I forgot the number of
11 Information Requests but there were two hundred (200)
12 in -- in total and, you know what, the Board did just a
13 fine -- the PUB did just a fine job in approving rates
14 with that kind of information.

15 THE CHAIRPERSON: Can I just comment --
16 comment on that? You're referring to the volume of the
17 IRs and -- and the number you have received from the
18 PUB and the Intervenors, and this is sort of a
19 recurring theme.

20 But could you please clarify for me like
21 how the volume of IRs relate to their relevance, and/or
22 the jurisdiction of the PUB?

23 MS. KATHY KALINOWSKY: Sure, I can
24 answer that. The -- the IRs, many of them -- and this
25 year MPI has looked at them, has done a careful

1 August 18th, and I am wondering if you could explain to
2 the panel, on what basis did the CEO make the statement
3 in his letter of that date that Basic is in serious
4 capital deficiency and deficiency of premiums as a
5 result of a jurisdictional issue with PUB?

6

7 (BRIEF PAUSE)

8

9 MS. KATHY KALINOWSKY: I don't have the
10 exact figures with me, but over the last two (2) years,
11 Ms. Proven --

12 MS. ANITA NEVILLE: I asked the
13 question.

14 MS. KATHY KALINOWSKY: Oh sorry. Sorry
15 about that, Ms. Neville. I was busy writing down the
16 information instead of looking at you. I apologize for
17 that.

18 Over the last two (2) years, in each
19 year, the Basic line of business has posted losses of
20 \$60 million each year, 60 million each year. In
21 conjunction with that, the rate stabilization reserve
22 is less than a -- \$100 million, which is less than half
23 of what we are putting forward in the DCAT as what it
24 should be.

25 So there has also been a insufficiency

1 of premiums partially -- it's a much smaller amount,
2 but partially in the past year, because of the .9
3 percent ordered as opposed to the 1.8 percent applied
4 for, so .9 percent there, but those would all relate to
5 the serious capital deficiency and deficiency in
6 premiums.

7 MS. ANITA NEVILLE: Thank you. Mr.
8 Gosselin wants follow-up on -- on this one before I
9 continue.

10 MR. REGIS GOSSELIN: I have a lot of
11 difficulty reconciling the letter and what you just
12 said to the application that's before us. I'm looking
13 at -- I'm looking at the comments overview that's
14 contained in the application. It is showing a loss for
15 the year of -- expected loss for '13/'14 -- pardon me,
16 actual, actually, showing a loss of \$69 million. That,
17 I admit.

18 Attributable to claims costs of a loss
19 there of 104 million, losses attributable to -- par --
20 pardon me, small loss and earned premiums, a gain in
21 investment income. And now you're proposing to this
22 Board that the reason that -- that you're showing a
23 loss is because of the confrontation that we have with
24 -- with PUB, and I -- I'm perplexed by that statement.

25 MS. KATHY KALINOWSKY: And you should

1 be, because that's not the intention of this statement
2 in any way, shape, or form. When I mentioned the 1.8
3 versus the .9 percent, that's approximately \$8 million,
4 \$9 million less. So that's -- I understand that. I
5 know which page --

6 MR. REGIS GOSSELIN: Actually, the
7 applications says .4 -- \$4 million is the difference
8 between what you would have gained rather than --

9 MS. KATHY KALINOWSKY: And that's
10 because it's -- remember how the rating works over two
11 (2) years? So that's in year 1 of the -- of the rate
12 increase or rate decrease. Only 50 percent goes in,
13 because the premiums are gathered over the next year,
14 too.

15 So take -- the overall effect is going
16 to be \$8 million. Four (4) million shows up in 2015, 4
17 million shows up in 2016, but I know the pages that
18 you're referring to in the application. I don't have
19 them here in front of me, and I know that it very
20 succinctly goes through about eight (8) or nine (9)
21 different points as to why there has been this loss
22 this year. It's claims experience. There's a number
23 of things with the interest rates. There's a number of
24 things with actuarial adjustments and -- along with
25 this one (1) aspect.

1 So, yes, I agree with you.

2 MR. REGIS GOSSELIN: Pretty clear to me
3 that the loss that you incurred for the '13/'14 period
4 is -- is mostly attributable to claims costs. So to
5 assign the responsibility to PUB for having failed to
6 grant you what you wanted, I think is disingenuous. I
7 -- I'm really perplexed by your statement that you --
8 that would be made to that effect.

9

10 (BRIEF PAUSE)

11

12 MS. KATHY KALINOWSKY: We hear you on
13 that. Thank you.

14 MS. ANITA NEVILLE: And just picking up
15 on Mr. Gosselin's comments and going back to the letter
16 of August 18th, what confrontational behaviour is the
17 CEO referring to in that letter?

18 MS. KATHY KALINOWSKY: Sure. I can
19 speak to that. The -- part of the confrontation comes
20 about just the way that the rate application and
21 hearing process unfolds prior to the hearing. So we
22 put out a rate application, and then there are
23 intervenors and the PUB that put in their Information
24 Requests, and then we look at the Information Requests
25 in this way. We've looked at them from the perspective

1 of the Intervenors and others, and we now are the ones
2 that are saying, Whoa, stop. We don't believe that
3 this number of Information Requests are relevant for
4 rate-setting purposes.

5 So therein the confrontation lies, and
6 it's MPI -- by nature of how the process goes, MPI is
7 the one that is saying, We don't think these are
8 relevant for rate-setting purposes. So that's the
9 confrontation there.

10 MS. ANITA NEVILLE: So if I'm correct,
11 what I'm hearing from you is a request for information
12 is deemed by 'M' -- 'M' -- MPI to be an effort to be
13 confrontational.

14 Is that what you're saying?

15 MS. KATHY KALINOWSKY: Absolutely not.
16 The confrontation comes by us having to say no to the
17 response, and I don't think that's in anybody's best
18 interest in this regard. I think what's really
19 important is that we try and work collaboratively, we
20 try and work within the spirit of the law, within the
21 mandate of the different parties, and eliminate this
22 confrontation.

23 What we want to do is -- you know, when
24 you look at it for -- you know, as -- I can't remember
25 which one of the Intervenors said, Well, we're talking

1 really kind of about next year in some ways.

2 But next year, if the Intervenors don't
3 ask questions in areas that we believe that are beyond
4 the statutory jurisdiction of the PUB, then there will
5 be no need for MPI to say no to this. So we're looking
6 at this as being something that will establish
7 parameters, what's in and what's out, and so what's in
8 the box, what's out of the box that way, instead of the
9 box just continuously being expanded, expanded,
10 expanded.

11 So we'd like to have some -- to be able
12 to defuse the kind of confrontation that has occurred
13 this year. It's very unfortunate. MPI does not relish
14 the fact that it is here opposing Intervenors' app --
15 motion to compel responses to the Information Requests,
16 but at the same time, MPI feels very strongly that the
17 Board has sufficient information, when you look at the
18 different aspects of all the information on rates, all
19 the informations on financial forecasts, all the
20 written information on actuarial modelling, all of the
21 information on the DCAT and reserves, that the PUB is
22 in a very, very good position to approve what will
23 still be amongst the lowest rates in Canada.

24 MS. ANITA NEVILLE: So what I'm hearing
25 is, is that there'll be no confrontation as long as MPI

1 and the Interv -- or PUB and the Intervenors ask only
2 questions of you what you want to tell us.

3 MS. KATHY KALINOWSKY: No, absolutely
4 not. Ask questions that are within the statutory
5 mandate of the Public Utilities Board. As I said,
6 we'll answer questions till the cows come home on DCAT,
7 on different aspects like that, actuarial modelling,
8 rate-making, and financial projections.

9 MS. ANITA NEVILLE: Again, as -- as you
10 interpret it. One (1) just final question going back
11 to this letter of August 18th. One (1) of the
12 paragraphs begins that, "Leadership is required to
13 solve this matter." And I don't think anybody would
14 disagree with that.

15 I'm curious to know why the CEO of MPI
16 has chosen not to sit at the table with you today.

17 MS. KATHY KALINOWSKY: I suppose he
18 could be sitting here. It -- for motions, motions --
19 the statutory -- or, sorry, the administrative law
20 practice is that motions are argued by counsel. So
21 that's -- we don't hear Ms. Reichert, for instance,
22 answering questions. It's counsel that do motions.
23 Motions don't have the introduction of evidence, so
24 there's no sworn witnesses.

25 MS. ANITA NEVILLE: I'm aware of that -

1 -

2 MS. KATHY KALINOWSKY: They're just
3 different from the hearings.

4 MS. ANITA NEVILLE: -- but Ms. Reichert
5 is at the table. I'll leave it at that right now.
6 Thank you.

7 MS. SUSAN PROVEN: I'd like to take us
8 back to that comment that you made where you received
9 over a thousand questions, and it was overwhelming.
10 And I'm sure it is. And then you chose to answer five
11 hundred (500) to make it manageable. And to -- to
12 avoid the, I would want to say, frustration rather than
13 conflict. Just frustration of having to deal with all
14 that.

15 But we've got two (2) Intervenors here,
16 CMMG and ARM, and they've both referenced a natural
17 justice issue. Because what you did was you actually
18 filed all this information, and the information was on
19 topics that they want further information on. So they
20 say they can't question -- they feel like they can't
21 question further the material that you already placed
22 on the record. So it's already there.

23 And I'm just wondering if you could make
24 some comments on that. Like, you've given us so much
25 and now it's almost like we're shutting the door on

1 that particular room, so we can't enter it. And that's
2 their problem. And it is our problem, too. Because,
3 of course, we received the same blanket statement. We
4 can't go any further. And yet we've got -- we've got
5 the door open.

6 So can you make a comment on that?

7 MS. KATHY KALINOWSKY: Sure. Some of
8 the information, of course, was filed to be helpful.
9 It was filed to be collaborative. I believe it was
10 last year Mr. Gosselin asked a -- a question that was
11 something to the effect of -- and I should know it
12 because I just recently even looked at it again. But,
13 you know, what are the ratepayers getting for this
14 increase? And if you don't get the increase what, you
15 know, what -- what's going to happen to them?

16 And so we came up with this value for
17 Manitobans section. And we thought, Okay, that's --
18 can be helpful, collaborative, and provided information
19 at a fairly high level on that. Does that go towards
20 rate making? Not really. It's provided to be helpful,
21 to put some context in. To have one (1), you know --
22 you know, a -- a paragraph here, a paragraph there that
23 kind of referred to aspects of physical damage re-
24 engineering and then suddenly be faced with
25 approximately twenty-five Information Requests and a

1 whole intervention of one (1) party that wants to just
2 examine one (1) tiny little area is absolutely not
3 what's in contemplation of the intent of the
4 legislature to approve rates.

5 It's an operation review, or audit,
6 subject to, you know, not the financial audit, but it's
7 an operational review of an aspect of MPI. It's one
8 (1) small aspect, very important for those individuals
9 that make their livelihood from that, but out of the
10 entire Corporation those -- those questions that have
11 been put forward don't deal with aspects germane to the
12 2015 rates.

13 MS. SUSAN PROVEN: But in fairness to
14 that group, could you not have denied their application
15 to intervene? I mean, really what we've got here is a
16 group that were given, and you didn't say anything at
17 the time, you didn't oppose that. I don't know what
18 you thought their interest was but, I mean, we could
19 all guess what it was.

20 So it would be natural to expect them to
21 be able to go forward with their intervention. And now
22 they say they've done all this work, they've spent all
23 this money, and they feel like they were wasted --
24 their whole thing was a waste. So how would you
25 comment to that?

1 MS. KATHY KALINOWSKY: At the time of
2 your application for intervention, we've -- MPI's
3 position was to give no position at all. No comments
4 either opposing or supporting their application for
5 intervention. It's the belief of the Corporation that
6 any application for intervention should be with respect
7 to the rates, and be that as it may.

8 MS. SUSAN PROVEN: Well, to follow up,
9 I mean I'm not going to let this go because I think it
10 pertains to rates. I think what we're look -- looking
11 at is how much do the parts cost for new versus
12 recycled, and I'd like to look further into other
13 costs, not just economic. But of course I know we
14 can't go there, economic and -- or environmental and
15 health costs. We're not going there.

16 But, I mean, as a society when we run a
17 corporation aren't we interested in all the
18 possibilities?

19 MS. KATHY KALINOWSKY: Absolutely.
20 When we run a corporation, we're interested in all the
21 possibilities. That's why there is a dialogue that's
22 not in front of the Public Utilities Board between the
23 recyclers and Manitoba Public Insurance. There's also
24 a dialogue between, let's say, the auto body shops, and
25 their organizations, and MPI. There's dialogue between

1 the insurance brokers and MPI.

2 But that doesn't mean that that dialogue
3 goes through here, given the statutory mandate of the
4 Public Utilities Board.

5 MS. SUSAN PROVEN: Thank you.

6 MR. ALLAN MORIN: Just a point of
7 clarification as we go forward. At the GRA hearing,
8 will MPI answer questions on cross-examination in the
9 subject areas at issue certainly pursuant to the
10 pending motions?

11 MS. KATHY KALINOWSKY: There will be a
12 follow through that's -- depending on the results of
13 this motion, if -- if the Board upholds MPI's denial of
14 responses then it is the intention of MPI to not
15 respond to cross-examination on those issues.

16 MR. ALLAN MORIN: Okay. Thank you.

17

18 (BRIEF PAUSE)

19

20 MR. REGIS GOSSELIN: Does MPI agree
21 that the -- with the general statement that I've made
22 indirectly in my previous questions, the general
23 statement that any costs incurred by Basic for any
24 purpose are ultimately embedded within Basic rates and
25 charged to motorists or motorcyclists?

1 (BRIEF PAUSE)

2

3 MS. KATHY KALINOWSKY: Based on the
4 financial projections and actuarially -- actuarial
5 modelling, any costs that are to be incurred by Basic
6 are to -- in the end result to be included in the rates
7 charged to the motorists, the ratepayers of Manitoba.

8 MR. REGIS GOSSELIN: So we can't look
9 at them.

10 MS. KATHY KALINOWSKY: Never said that.
11 There's massive amounts of information on prospective
12 costs. There's a huge section with lots of details on
13 perspective expenses. We've answered enormous amount -
14 - and historical. We've answered numerous Information
15 Requests on that.

16 MR. REGIS GOSSELIN: Now, we've been
17 talking about the CCC and the Auditor General and the
18 work that they do, and wondering, would you be in a
19 position to file with -- with the PUB the results or
20 outcomes of any of the work that they have done to
21 assess MPI?

22 MS. KATHY KALINOWSKY: With respect to
23 the office of the Auditor General's review, it's on the
24 website. It's -- it's public information. There was a
25 special -- I'm going to call it a standing committee,

1 but I'm not quite sure, but it was a committee of the
2 legislature that deals with the Auditor General's
3 report. MPI attended at that. There's hand script --
4 or Hansard -- Hansard transcript of -- of that
5 proceeding that's available on -- they call Hansard.
6 It's available on the internet.

7 With respect to the Crown Corporations
8 Council, all of their reports to the minister are -- to
9 their minister are confidential.

10 MR. REGIS GOSSELIN: Now, I know that
11 the Board of Directors of MPI probably has approved the
12 application that's before this Board.

13 MS. KATHY KALINOWSKY: Correct.

14 MR. REGIS GOSSELIN: But I know how
15 Board of Directors work, having sat on many of them,
16 and I would suggest that the review done by MPI of the
17 application and the underlying evidence to support the
18 application is far less strict or rigorous than the
19 review that's conducted by this Board.

20 MS. KATHY KALINOWSKY: It's a different
21 type of review.

22 MR. REGIS GOSSELIN: Now, I guess the
23 question is, are you objecting to a more rigorous
24 review of the underlying evidence to support the
25 application to this Board?

1 MS. KATHY KALINOWSKY: No, I'm not
2 objecting to that in any way, shape, or form. There's
3 different forums for different types of reviews. The
4 Board of Directors does one (1) type of review, Crown
5 Corporations Council does another type of review,
6 office of the Auditor General does another type of
7 review.

8 I believe that we've provided the
9 information necessary for the PUB, within their
10 statutory mandate, to fulfill its function of approving
11 Basic rates.

12 THE CHAIRPERSON: Okay, thank you very
13 much. I'm going to call upon the Intervenors now to
14 reply to any of the comments that have been made by MPI
15 or the PUB. I'm going to start with Mr. Williams, from
16 CAC.

17

18 REPLY BY CAC (MANITOBA):

19 MR. BYRON WILLIAMS: And certainly,
20 we'll restrict our comments to the commentary of -- of
21 MPI, not -- not to the Board's commentary.

22 Just -- everyone in the room was no
23 doubt gratified to learn about the role of Crown
24 Corporations Council and the Board of MPI and their
25 audit function and the function of the Auditor General.

1 But a -- a word of caution. Manitoba
2 Public Insurance suggests somehow that this is unique
3 to Manitoba, and that these functions can somehow usurp
4 the role of the Public Utilities Board.

5 If the Board use -- chooses to do a
6 simple Google, check out the British Columbia
7 legislation. Check out the Budget Transparency and
8 Accountability Act. Check out the Financial
9 Administration Act. Check out the Crown Agency's reso
10 -- re -- resource office, or CARO, and Google a summary
11 of British -- BC's Crown Agency accountability systems.

12 This Board will know from its Hydro
13 review that there's a similarly robust and arguably
14 more interventionist role for Crown Corporations in
15 British Columbia. Our simple point is this, that does
16 not usurp the role of the BC Utilities Commission,
17 which still sees it in its mandate of fixing just and
18 reasonable rates to look at the prudence of
19 expenditures, and so that's the simple analogy that I
20 will draw there.

21 Manitoba Public Insurance referenced a
22 1989 case relating to CAC (Manitoba) and the Manitoba
23 Society of Seniors and Manitoba Hydro. That case,
24 again, should be read with caution. Just a small
25 quibble, although nothing turns on it. Then I'll get

1 to my big quibble.

2 My small quibble is that I believe that
3 the judgment My Learned Friend is citing is a majority
4 judgment. There is a min -- minority judgment there,
5 so just to get the whole richness of the decision, I
6 would certainly recommend that for the panel.

7 More importantly, though, the question
8 before the Court of Appeal -- and, Diana, you could
9 just pull up page 10 of the MPI brief? Scroll up a
10 little bit. Scroll down. Yeah, right -- right there.
11 There's the question:

12 "Does the PUB have jurisdiction to
13 approve, reject, or vary hydro
14 capital project plans such as plans
15 to construct new generating stations
16 incidental to or as a condition of
17 granting approval for changes to the
18 price charged for power?"

19 In essence, asking -- and you can leave
20 -- take it down now, Diana -- in essence, asking, Could
21 you say no to Keeyask as part of your rate-setting
22 function? Or in -- in the Manitoba Public Insurance
23 context, could you say no to the HRMS project in the
24 process of the rate-setting process?

25 And the answer by the Court of Appeal,

1 at least by two (2) of the three (3) judges, was, No,
2 and the reason being was because that power was not
3 express or necessarily implicit in the legislation.

4 That is not at all what we're suggesting
5 for the purposes of our submission. And if -- Diana,
6 if you could pull up Section 26(4) of the Crown
7 Corporations' Public Review and Accountability Act,
8 that tells you that in setting -- section 26(a)(I), it
9 says expressly that in setting just and reasonable
10 rates, you can look at the amount required to provide
11 sufficient monies to cover operating, maintenance, and
12 administration expenses.

13 It tells you -- 26(4)(v) -- you can look
14 at any other reserves that are necessary for the
15 maintenance, operation, and replacements of works of
16 the Corporation.

17 The 1989 case is -- is -- stands a
18 quantum analytical distance from our point here. We
19 have ex -- express statutory authority which only,
20 frankly, makes express what is already implicit in the
21 words of just and reasonable rate -- very different
22 from what Manitoba Public Insurance is suggesting.

23 We were surprised that in its reply
24 argument, Manitoba Public Insurance did not respond to
25 our comments -- and I won't go through them -- but if -

1 - our comments on -- on pages 16 and 17 on -- of our
2 PowerPoint about authority from the Court of Appeal
3 listing -- linking costs and just and reasonable rates.
4 So we'll just leave that point at that.

5 With respect, the greatest of respect,
6 Manitoba Public Insurance does not understand the basis
7 on which we cite the wealth of authority in Manitoba by
8 this Board, all across Canada, and across North
9 America, supporting the point that the consideration of
10 just and reasonable rates necessarily involves prudent
11 and necessary costs.

12 We do not suggest that these cases
13 somehow change Manitoba law. Those words, "just and
14 reasonable rates," are in our legislation. Section
15 26(4) again tells you what to look at. We say that
16 those cases are auth -- ref -- give insight into what
17 those words mean, and they have a universal meaning.

18 The Manitoba legislature, when it
19 brought in the Crown Corporations Act in 1989, would be
20 well aware of the wealth of case law saying what just
21 and reasonable rates are. I cited Bonbright, because
22 that says -- it goes right to the heart of rate
23 setting, looking at costs for Crowns as well.

24 Just a final point about road safety.
25 From our client's perspective, the Board's judgment in

1 last year's GRA carefully walked the line between its
2 role and the role of others. I'll -- I'll simplify it,
3 but it said, Come back and tell us how you're
4 optimizing your budget to minimize the economic costs
5 and the social catastrophe of accidents. Tell us what
6 you're doing to make sure that ratepayers get bang for
7 their buck.

8 So if the -- if the Manitoba Public
9 Insurance, for example -- and I just -- I'll use this.
10 I'm not suggesting this is their pattern. If they
11 choose to use a road safety budget of 4 million or 8
12 million or 10 million, not for legitimate road safety
13 objectives, but to enhance the Corporation brand. That
14 is their choice. That is their right, but if they come
15 to the Public Utilities Board and say, We'd like to --
16 you to pass on to ratepayers, captive, vulnerable
17 ratepayers of a monopoly, if you'd like us to pass on
18 those \$10 million for PR purposes, our client says,
19 with the greatest of respect, it is open to the Board
20 to say, We're not going to pass all those costs on.
21 You make your decisions, whether they're good or bad,
22 but when you come to rates and when you're seeking our
23 approval on rates, we have a right to test whether
24 that's -- those rates are just and reasonable, and
25 whether ratepayers are getting value for their

1 expenditure.

2 We thank the Board for the -- the
3 opportunity to make our submissions, and for the
4 patience in which you've listened to my often too
5 lengthy submissions. Thank you.

6 THE CHAIRPERSON: Thank you, Mr.
7 Williams. Now, I will ask Mr. -- or should I...

8 MS. CANDACE GRAMMOND: I can indicate,
9 Madam Chairman, that Mr. Oakes has gone. He
10 unfortunately had another obligation, but he had
11 indicated that any comments that he would have made in
12 reply would be covered off by Mr. Williams and/or Mr.
13 Frost, so we can just proceed with Mr. Frost.

14 THE CHAIRPERSON: Okay, Mr. Frost.
15 Thank you.

16

17 REPLY BY ARM:

18 MR. IRVIN FROST: Thank you, Madam
19 Chair. I do have just a couple of comments and I
20 propose not to take much time. I want to follow up on
21 what Ms. Proven said -- oh, for sure. Are we good?
22 Thank you.

23 My apologies, Madam Chair. I'd like to
24 follow up on what Ms. Proven kind of dug into a little
25 bit, because that's the heart of our position.

1 And it's interesting Ms. Kalinowsky took
2 no position on our app -- application for intervention,
3 thank you very much, but now we get slapped in the face
4 a little bit. We -- and she also said if questions are
5 asked with respect to -- and I may not have the quote
6 right, Any relevant rate making, rate stabilization, or
7 fund -- final projection -- I don't know if I --
8 financial, pardon me, my notes are bad -- financial
9 projection, she would answer those questions until the
10 cows come home. I think those were her words.

11 But the problem with that dialogue is we
12 don't have standing. We don't have the intervention to
13 ask those questions. If we were going to ask those
14 questions, I'm sure somebody, maybe one (1) member of
15 the panel or Ms. Kalinowsky herself, would say, That's
16 not your role here. Our role is as stated in the
17 intervention that was granted to us.

18 Now we're being told, Well, you're not
19 welcome at the table. We don't want your intervention.
20 We don't want your IRs, and we're not going to ask any
21 questions in the -- how -- in respect of the management
22 of physical damage claims in terms of the program that
23 is being -- the re-engineering -- the -- the damage re-
24 engineering program, which is fundamentally while we're
25 -- why we're here.

1 After that, it's kind of, with all due
2 respect, disingenuous to now say, We're not going to
3 answer I -- your IRs. We're not going to let you
4 cross-examine in -- in any of the areas that are not
5 your areas. So, frankly, what are we doing here, and
6 why did my client incur the costs of going through this
7 exercise to this point? It frankly makes no sense.

8 One (1) more comment. I -- I -- I'm not
9 -- I'm the first one (1) in this room to say I'm not
10 conversant with the process. I've read the
11 legislation. I'm very green in this area, so I stand
12 to be corrected. I say that at the outset, but if I
13 read this motion, this motion brief of MPI, it says:

14 "Page 9 of 20. The legislation --
15 the leave for appeal was denied."

16 The Court of Appeal stated in Consumer
17 Association of Canada (Manitoba), the BC Hy -- the
18 Manitoba Hydro case, paragraph 63:

19 "The intent of the legislation is to
20 approve the fair rates, taking into
21 account such considerations and as
22 costs and policy are otherwise -- of
23 costs and policy or otherwise as the
24 PUB deems appropriate."

25 Now, My Friend would say that, Well,

1 that's all well and good, but it's within the box.

2 Well, what's the box? The box, you just have to look
3 upstairs. 26(4) more or less tells us what the box is,
4 unless I misunderstand it. And again, I stand to be
5 corrected. It talks about:

6 " (I) the amount required to provide
7 sufficient monies to cop -- to cover
8 operating, maintenance, and admin
9 expenses. Any compelling policy
10 consideration that the Board
11 considers relevant to the matter."

12 And finally, which I find fascinating:

13 "Any other factor that the Board
14 considers relevant to the matter."

15 So the box, quite frankly, is what's
16 relevant for the purposes within the four (4) corners
17 of this document. That's what's relevant. That's what
18 your box is.

19 It's all about rate setting, and costs
20 involved in that rate setting. So if they're saying
21 they're going to save \$13 million reduction in costs,
22 including almost 10 million directly related to
23 reducing claim costs, well, that's part of the
24 exercise. Ought it maybe to be 50 million saving?
25 Ought it to be 12 mill -- we -- we don't know the

1 answer to that. That's what's being tested here.

2 And to come here and say, Well, you
3 can't look at it, because it's not part of setting a
4 rate, or it's not part of rate stabilization, or it's
5 not part of financial projection of rates, is somewhat
6 bizarre to me, because that puts a spin on it that if I
7 heard My Friend Mr. William (sic) takes away from
8 historical -- he -- from historical matters before the
9 Board, from precedence that he has given you, and even
10 from, frankly, the legislation.

11 This case also goes onto say at
12 paragraph 66:

13 "All in all, the PUB addressed the
14 right question, the reasonableness of
15 approved rates."

16 And basically, what is the
17 reasonableness of approved rates if you don't look at
18 the input, if you don't look at what's being presented
19 to establish those rates? One of the inputs, granted
20 not a major or huge input, is this re-engineering
21 program.

22 So at the end of the day, the Board was
23 absolutely right in granting us standing in the area
24 that we have an interest in, and the area that the
25 Board has an interest in, and the area that the public

1 has an interest in, all about reducing costs in setting
2 the rate.

3 One more item and I'll stop. We were
4 presented with this Exhibit Number 2 as evidence, I
5 think -- I think that the information requested was
6 twelve hundred (1,200) in 2012, but the actual
7 Information Request appearing in the book of documents
8 was a fraction of that.

9 Well, maybe -- common sense tells me
10 maybe somebody looked at these IRs, got the answers,
11 and reduced their question to the point where it was a
12 manageable exercise. It could very easily have been
13 the reverse way. You could have had the blue being the
14 small and the red being huge if -- if it didn't work
15 out in terms of how the process is intended to work.
16 That is, to get the IRs, to streamline the process, to
17 have matters before the Board that are relevant,
18 cogent, and transparent. And -- and basically, that's
19 what I think the IRs are about, and I think it's
20 frankly disheartening to see MPI take this narrow,
21 narrow position, and frankly, not in the interests of a
22 transparent process. Thank you.

23 THE CHAIRPERSON: Thank you, Mr. Erwin
24 -- Irvin. I was wondering if Ms. Young from CAC -- CAA
25 would have some comments.

1 MS. ANGELE YOUNG: CAA (Manitoba) does
2 not have any comments at this time.

3 THE CHAIRPERSON: And M. Monnin from
4 Bike Winnipeg...?

5

6 REPLY BY BIKE WINNIPEG:

7 MR. CHRISTIAN MONNIN: Oui, mer --
8 merci, Madame -- Madame President. We just have a -- a
9 very few questions. By and large we're just part of
10 the 'me too' brigade, and we adopt and rely again on --
11 on the most able submissions made by -- by My Friends.

12 I just want to reiterate the fact that
13 although Bike Winnipeg isn't currently in the -- in the
14 situation as -- as the -- the rest of the Intervenors
15 are at this moment, my understanding is that they soon
16 will be with respect to the anticipated response to IR
17 -- to our IRs, and therefore, I would ask the Board to
18 be mindful of that fact when they deliberate on this
19 matter. Thank you very much.

20 THE CHAIRPERSON: Thank you very much.
21 Ms. Grammond, did you have any comments, or -- okay.

22 I guess that would end our proceedings
23 for this afternoon, and thank you very much for coming
24 and participating. We will be deliberating very soon,
25 and come back with our decision.

1 --- Upon adjourning at 2:44 p.m.

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7 Certified correct,

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11 _____

12 Cheryl Lavigne, Ms.

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