



“When You Talk - We Listen!”



MANITOBA PUBLIC UTILITIES BOARD

Re: MANITOBA HYDRO
COMMERCIALLY SENSITIVE INFORMATION
MOTION

Before Board Panel:

- Robert Gabor - Board Chairperson
- Marilyn Kapitany - Board Member
- Larry Ring - Board Member
- Shawn McCutcheon - Board Member
- Sharon McKay - Board Member
- Hugh Grant - Board Member

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba

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1 APPEARANCES

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3 Dayna Steinfeld)

4

5 Patti Ramage) Manitoba Hydro

6 Odette Fernandes)

7

8 Byron Williams) Consumer

9 Katrine Dilay) Coalition

10

11 Antoine Hacault) Manitoba Industrial

12) Power Users Group

13

14 George Orle, QC) Manitoba

15) Keewatinowi

16) Okimakanak

17

18 Matt Nordlund) Business Council of

19 Carrie Ho) Manitoba

20

21 Bill Haight) Independent Expert

22) Consultants

23

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1 --- Upon commencing at 1:35 p.m.

2

3 THE CHAIRPERSON: Good afternoon,
4 everyone. I guess we're going to be speaking on the
5 motion for the commercially-sensitive information.

6 Ms. Steinfeld, I believe you're leading
7 on this?

8

9 OPENING COMMENTS BY BOARD COUNSEL:

10 MS. DAYNA STEINFELD: Thank you,
11 Chair. I'm happy to. What we have before us this
12 afternoon is a motion that was filed by Manitoba Hydro
13 on July 11th, 2017.

14 This motion is for an order of the
15 Board to establish the process for the receipt of
16 third-party information in the GRA, specifically the
17 issuance of preliminary rulings with respect to such
18 information, and also the use of the independent
19 expert consultant retained by the Board as the party
20 designated to access and hold in confidence Manitoba
21 Hydro commercially-sensitive information and third-
22 party information related to the capital review.

23 Fillmore Riley as Board counsel
24 prepared a process schematic and received Manitoba
25 Hydro's input on that. It was distributed to the

1 parties and has been provided to the panel as a means
2 in assisting with the discussions today.

3 We understand that the representative
4 of -- representatives of the GSS/GSM customer class
5 and the Green Action Centre are not taking any formal
6 position on this motion and are not appearing today.
7 I don't believe we received comments from the Assembly
8 of Manitoba Chiefs on -- on this motion specifically.
9 I'll double check that and -- and correct the record
10 if necessary.

11 We have, in the order of proceedings,
12 Manitoba Hydro providing initial submissions on the
13 process motion. And that would be an opportunity as
14 well for the Board to ask any questions it has as to
15 what Manitoba Hydro is seeking, followed by
16 submissions of the Intervenors.

17 Over the lunch hour, counsel
18 endeavoured to just focus the discussion on this
19 matter, and it may be that we don't require the full
20 time allotted here. But in the event that we do, we
21 are scheduled to go through to 4:15 this afternoon.

22 So with that, I would suggest that we
23 start by turning it over to Ms. Ramage for Manitoba
24 Hydro to speak to their motion.

25 THE CHAIRPERSON: Thank you. Ms.

1 Ramage...?

2

3 SUBMISSIONS BY MANITOBA HYDRO:

4 MS. PATTI RAMAGE: And I see I've been
5 allotted a full hour, and I can't imagine it even
6 taking close to that. I'd hoped that the letter
7 explained the process we were envisioning sufficiently
8 that I wouldn't have to go through it. However, based
9 on our meeting of counsel right now, I think I'll walk
10 a little slower through the steps.

11 So the treatment of CSI in this -- in
12 this proceeding is something that's -- that's -- and
13 any proceeding is always a challenge, because Manitoba
14 Hydro wants to -- it's our desire to make it a
15 transparent process, not only because transparency is
16 like mom and apple pie that you want it. It's because
17 this is a lot of work for us.

18 I'd rather just give everybody the
19 materials and be able to move on, but we have
20 contractual obligations that don't allow us to do
21 that, or we're relying on information that is not
22 ours. And so we have to address those legal
23 realities.

24 In this case, we believe the proposal
25 that we have put forward with respect to -- and I'm

1 going to kind of focus on major projects at the front
2 end, that it lends -- that the IEC process,
3 independent expert consultant, and I will attempt to
4 not say IEC each time, but it will be a challenge.

5 In this case, the commercially-
6 sensitive information independent expert consultant
7 proposal lends itself to Order in Council 92 of '17 to
8 that review of major capital. And we think it's also
9 the best solution for dealing with commercially
10 sensitive information that has and will inevitably
11 arise during this GRA.

12 In terms of -- the new major capital
13 presents a huge challenge for commercially-sensitive
14 information, and that's because much of it is third-
15 party information. And by "third-party information,"
16 I mean a third party has a proprietary interest in the
17 information that Manitoba Hydro has a legal obligation
18 to protect.

19 The example provided in our June 11th
20 letter was that -- was the major project bids and
21 contracts. These bids and contracts contain pricing
22 information and other proprietary information such as
23 designs, methodologies, drawings, and that the release
24 of that information could material -- materially harm
25 the owner if it was -- went into the public domain.

1 And the owners of that information are very protective
2 of it.

3 When Manitoba Hydro sought consents to
4 release -- to disclose the information in this
5 process, they wanted to understand how it would be
6 protected. If it went to the PUB, they wanted to know
7 that it wouldn't go further. And that's a guarantee
8 Manitoba Hydro can't give, at least at -- at this
9 stage in the process.

10 Hence we're here to try to develop a
11 process that at least on a preliminary basis, we can
12 get that information into the hands of the PUB as soon
13 as possible, and without the need for any legal
14 wrangling. And when I say "legal wrangling," you
15 might ask why not just say, Sorry, to these people,
16 There's an OIC. It says, Hand the information over.
17 And Manitoba Hydro's -- do that, and not bother with
18 seeking consents.

19 And it's true, we do have an OIC that
20 directs Manitoba Hydro to provide the information, but
21 we also have those legal obligations. And in the
22 contracts that we sign, the typical obligation is we
23 will hold it in confidence, subject to lawful
24 authority requiring it, but in that -- in that event
25 when a lawful authority requires it, we will provide

1 notice, and the owner of the information then has the
2 ability to seek injunc -- injunctive relief, or any
3 other relief it deems necessary to protect its
4 information.

5 So we are attempting to avoid having to
6 trigger that kind of process amongst parties who, from
7 our perspective, are keen to protect their
8 information, and don't understand this process, and
9 don't -- haven't received the assurance they need or
10 require that their information be protected.

11 And my fear is, if we don't put in some
12 kind of a process that allows us to give them that --
13 that assurance, that some of these parties will seek
14 injunctive relief. Whether they're successful or not
15 is an entirely different story, but that type of
16 process will take the issue out of our hands. It will
17 put it into the courts, and delays will be inevitable.
18 We won't be able to get the information out as we
19 want.

20 I think it's all very unnecessary,
21 given most of the counter-parties are just wanting
22 assurance that their information will be held in
23 confidence. And that confidence is something this
24 Board has given certain types of information in the
25 past, and with respect to the major capital

1 information, I think it's -- it's information that I
2 expect will not be particularly controversial with
3 most parties in the room.

4 And I say that in part because we're
5 not asking for this determination to be final in terms
6 of -- we're asking for an IEC process that the IEC
7 will hold it in confidence. The IEC will issue its
8 report, but we'll have an Information Request process
9 going on with Intervenors, and that -- if they ask
10 for, for example, and CPJ, we will look at that CPJ
11 and it will be dealt with on a separate front. It's -
12 - we're not suggesting that this process precludes an
13 Intervenor for making a request. It just allows us to
14 get the information into the hands of the parties who
15 need it today. And we can deal with other requests on
16 a -- on a request-by-request basis.

17 THE CHAIRPERSON: Ms. Ramage, just in
18 case there's somebody out there actually watching
19 this, can you indicate for the record what a CPJ is?

20 MS. PATTI RAMAGE: Oh, sorry.

21 THE CHAIRPERSON: That's okay.

22 MS. PATTI RAMAGE: It's a capital
23 project justification, and it's an internal Manitoba
24 Hydro document that is part of the process to get a
25 capital project built, and it sets out the

1 justification for the project. It may have budget
2 numbers, that sort of -- and forecasts.

3 So the plan is, and it's set out in the
4 schematic produced by the PUB, is that Manitoba Hydro
5 will file the information, will file its motion that
6 information be held in confidence. And in that
7 motion, we will tell you what the information is and
8 why it requires protection.

9 If the information is Manitoba Hydro
10 information and there's no third party rights, it will
11 be filed in blue paper along with the -- with the
12 motion. In many cases -- and I'm thinking -- when I'm
13 telling you this, I'm dealing with the MFRs, the
14 minimum filing requirements that were submitted by the
15 Board.

16 And our intent is regardless of what we
17 do with the -- with the IEC, we will be responding to
18 those MFRs, and whether the Board pushes that
19 information off to the independent expert consultants
20 is another story, but we have prepared responses and
21 we have filed them already, some of them redacted.
22 And so the intention is that we would file the full
23 response, and that's if it's Manitoba Hydro
24 information.

25 But if it's third-party information, we

1 won't file it with -- with the actual motion. We'll
2 be describing the -- we will set out the affected
3 document. We will set out the status of -- of why it
4 is confidential at this point if a consent has been
5 received, if the consent is -- and -- and I can tell
6 you virtually 100 percent the consent is subject to
7 the PUB holding it in confidence.

8 And we will tell you the reason why we
9 believe the document needs to be confidential, but we
10 won't be providing that document. We would be
11 requesting a preliminary ruling at that point that the
12 Board will accept it in confidence. We then will file
13 it on -- in blue paper with the expectation that the
14 Board will look at it and either confirm that, Yes, we
15 agree it's confidential, or reject Manitoba Hydro's
16 motion, and this is the critical part.

17 At that point, if they reject the
18 motion, they send the document back to us and -- and
19 it's a do-over, because it doesn't mean you won't
20 require the document under the OIC, but at that point,
21 we've met the terms of our consent. We -- the -- the
22 PUB -- we filed it in confidence, the PUB did not
23 release it on the record. It's been rejected. And
24 then we go now to the contractual obligation and issue
25 notice.

1 If the Board says, No, it -- we're not
2 holding it in confidence and we do want it on the
3 public record, Manitoba Hydro, file it, we issue -- we
4 trigger the notice provision in the contract, tell the
5 -- the counterparty that this is what has occurred,
6 give them notice, and then it's up to them to take
7 what further steps, if any, they choose to do.

8 But the idea of the preliminary ruling
9 takes that piece of it out for what we think will be
10 the majority of contracts. I'd like to think it's a
11 hundred percent at the end of the day, but we don't
12 get counterparties excited over a fear of their
13 documents being released and running off to court when
14 I believe that the -- the panel will -- will
15 understand why it has to be confidential.

16 And now, the second part of our motion,
17 the -- it -- it dealt with the role of the IEC in the
18 major capital review. And the documents that we're
19 talking about in many cases are not just confidential,
20 they're huge. And the tender packages, the bids, the
21 contracts alone that are requested in the minimum
22 filing requirements, when we do a page tally, it's
23 upwards of a hundred thousand pages just for those
24 requested ones.

25 And those -- that was for the Keeyask

1 general/civil contract, the Keeyask bids -- or Keeyask
2 turbines and generators, and the Bipole III converter
3 stations, not the other two hundred (200) and
4 something contracts that are related to those
5 projects. It's those three (3) big ones, and that's a
6 hundred thousand pages.

7 They're not conducive to this kind of
8 review. They're not conducive to a redaction
9 exercise. We have to get counterparty consents.
10 Counterparties would have to participate in the
11 redaction exercise. Counterparties expect to be paid
12 to participate in the redaction exercise.

13 And from our NFAT experience with
14 independent expert counsel, we've ultimately found
15 that they weren't that interested in the contracts.
16 They -- like, they knew they were there, but they were
17 interested in other pieces or they were interested in
18 having our people turn to the page of the hundred
19 thousand pages, not review them themselves.

20 So to that end, we see that the role of
21 the IEC here would be with those big, voluminous
22 contracts. We're not proposing to -- with -- we will
23 not be proposing. You will ultimately get a motion on
24 this once we have this worked out that they be filed
25 with the Board but rather they stay with -- stay, I'm

1 going to say, at Manitoba Hydro. The IECs will come
2 in and review them and tell us what they want to do
3 with those contracts. That also assists us a great
4 deal with the contractors, the -- the counterparties
5 who are very concerned about their information leaving
6 the building.

7 And as we proceed through that, the IEC
8 will work directly with Manitoba Hydro staff. And
9 they will review the information. And, as was done in
10 the NFAT and the risk review, they will produce a
11 report. The report will document what information
12 they relied upon, we would expect. And the report
13 will be made available to all parties, and they can
14 ask the IEC questions on it. They can ask the IEC
15 what documents they relied on for a certain piece of
16 the report.

17 And when we get to that stage we can
18 deal with specific documents. And if there is more
19 concerns, then we'll deal with it then. But once we
20 know it's actually relevant to -- to the IEC's report,
21 that would be the time to deal with it.

22 The other benefit of -- of that
23 process, from our perspective, is it would greatly
24 reduce the number of Information Requests. And it
25 would make those Information Requests -- or it would -

1 - it benefits the exchange of information because on a
2 project of that size, to ask questions -- and we can
3 see it with the MFRs. The MFRs were ultimately like a
4 blast, give us everything. And this will allow the
5 IECs to come in and look at something and say that's
6 not what I was looking for and go direct -- and have
7 our -- our staff take them directly to where -- what
8 they need to see. And -- and it would -- it avoids a
9 lot of unnecessary exchanges of information and
10 document compilation.

11 But critical to that piece is -- and
12 we've -- we've done it both ways. We've done it where
13 the IEC did not participate in the Information Request
14 process. And we've done it where -- in the NFAT where
15 the IECs did participate in Information Requests. And
16 our experience at the NFAT was the duel process, where
17 they did both, was not manageable or workable.

18 So while our staff was working with the
19 IEC during the day, they were -- they were also
20 getting Information Requests. So our proposal is the
21 IEC relies upon this document exchange to get -- to
22 get the information they require. And they report it
23 -- they report that information in their report. It's
24 in a more efficient means of dealing with these huge
25 volumes of information, and much of which we don't

1 believe will be germane to the capital review. It
2 also protects Manitoba ratepayers because if CSI gets
3 in the public domain and it costs the Corporation
4 money, that cost is going to be born by the ratepayer.

5 Now, to such extent the con -- the
6 Intervenor has concerns related to the information
7 at the level of detail that can't be provided in the
8 public record, they can raise those concerns first
9 with the IEC, and they can be dealt with, or
10 information can be verified in the report. And, at
11 the end of the day, if it's specific to the issues
12 that they have been approved for in this hearing, they
13 can request that information from Manitoba Hydro.

14 The -- the purpose of this process
15 isn't to deny them the ability to ask. They can ask.
16 And if the information -- it's appropriate to give to
17 them, Manitoba Hydro will. If Manitoba Hydro can't,
18 it will take its usual steps of aggregation or
19 redaction. And if that's not satisfactory, the
20 Intervenor has the ability to make a rule 13 motion to
21 -- to request that a specific document be released to
22 them, or specific information.

23 Manitoba Hydro expects in this process
24 that the IEC will be made available for cross-
25 examination by the parties. And -- and I -- I

1 recognize that -- now that after our counsel meeting,
2 this is a more contentious issue. But Manitoba Hydro
3 does not expect that the IEC to participate in cross-
4 examination of the Corporation or of Intervenors. The
5 IEC will have had full access to Manitoba Hydro's
6 staff and documents. Staff have been instructed to
7 open the cupboards. What they want to see, they get.

8 It -- it's just counter-intuitive to
9 ask those staff to -- to open the drawers up like that
10 and then tell them, But these people will be cross-
11 examining you in two (2) months' time on what you tell
12 them. I don't think we're going to -- it's going to
13 be very difficult for staff to -- to work in that
14 environment.

15 To go from the neutral status to the
16 adversarial is -- is not in our view a workable
17 solution. In the risk review, the IEC limited itself
18 to questions of clarification. Manitoba Hydro has no
19 issue with responding to questions of clarification,
20 but conducting full cross-examinations we believe is -
21 - is untenable.

22 Now, we also included -- in the
23 schematic, there's CSI, which is not specific to the
24 major capital review. The type of information that
25 we're contemplating there would be export contracts,

1 export price forecasts, Manitoba Hydro's internal load
2 forecast, credit rating agencies, corporate risk-
3 management reports, and things like that.

4 Some of them will have third-party
5 information; some of them will be Manitoba Hydro
6 information. And that -- those -- those type of
7 documents are dealt with on the right-hand side of the
8 page. We would look for the same treatment of third-
9 party documents, and documents that are Manitoba Hydro
10 documents that are requested would be filed in the
11 normal course of a Rule 13 motion where the document
12 is produced.

13 I think that that -- if you have any
14 questions about the process -- because I've kind of
15 just meandered along here 'cause it's quite clear to
16 me, but I -- it may be as clear as mud to you.

17 But those are the -- the objectives of
18 -- of our proposal is try to move things along and get
19 things into the hands of the people who need to see it
20 as quick as possible without limiting or restricting
21 Intervenors' ability to request that information down
22 the road once we get to that stage in the process that
23 -- where their approved issues run into the --
24 intersect with the documents that we've been dealing
25 with under CSI.

1 THE CHAIRPERSON: Thank you. Any
2 questions?

3 I have a question. I understand third-
4 party contracts when they have the provisions usually
5 near the end of the contract in terms of, you know,
6 the confidential information and the process to go
7 through it.

8 I'm less familiar with export contrasts
9 (sic) and load forecasts and credit rating. In terms
10 of credit rating, I would assume that if you get
11 credit rating reports from agencies, you actually pay
12 for those.

13 Is that correct?

14 MS. PATTI RAMAGE: That is correct,
15 and I believe they run forty thousand dollars
16 (\$40,000) a report, as I've been advised.

17 THE CHAIRPERSON: We all went into the
18 wrong business. When you get that report, am I
19 correct that the report is about your company, and you
20 can do with that report as you so fit -- so please?

21 MS. PATTI RAMAGE: No. The credit
22 rating reports are actually through a contract between
23 the Province of Manitoba and the credit rating agency.
24 And in the past -- and this will all be documented in
25 our motion.

1 THE CHAIRPERSON: Yeah.

2 MS. PATTI RAMAGE: But in the past,
3 credit rating agencies came to the province, they met
4 with provincial officials, Manitoba Hydro officials.
5 And when they were in town, our people would just get
6 their consent to file this in the regulatory process.
7 And in the past that consent was forthcoming.

8 In the last year or so, we have now
9 been advised that the process has changed from their
10 perspective. That we now must go to their head
11 office. Those head offices are in New York, Denver,
12 Colorado, places like that. So we're not dealing with
13 the people we know, and when we ask for those consents
14 they ask us if we'd like to write a cheque for --

15 THE CHAIRPERSON: So they want more
16 money?

17 MS. PATTI RAMAGE: They would like to
18 see money. I can give you a little bit of a sneak
19 preview that after a fair bit of wrangling we obtained
20 consents to file with the Board. We haven't got
21 consents to put them on the public record. They're
22 quite opposed to that now because if we put them on
23 the public record, and with their policy of wanting
24 money for them, they've lost their ability --

25 THE CHAIRPERSON: So if you paid them

1 a bigger cheque, they'd go on the public record?

2 MS. PATTI RAMAGE: Presumably. We
3 haven't gone there with them but that -- down that
4 path with them but that's the direction it would go,
5 I...

6 THE CHAIRPERSON: Okay.

7 MS. PATTI RAMAGE: Export contracts
8 are different. That's part of the contra -- that
9 would be more what you're familiar with in terms of in
10 a contract that just requires that it -- the contract
11 remain confidential.

12 The practice historically has been
13 because on both sides of the border parties are -- are
14 required to file with their regulator; the parties get
15 together, they agree on redactions, and those -- the
16 redacted export contract gets filed with each of the
17 regulators. Public record redacted. Unredacted with
18 the regulator. And that's been a practice that we've
19 been following for --

20 THE CHAIRPERSON: Is it the same for
21 load forecasts?

22 MS. PATTI RAMAGE: For -- load
23 forecasts are quite different. That's also a
24 purchased product.

25 THE CHAIRPERSON: Okay.

1 MS. PATTI RAMAGE: Load forecast run,
2 I think I was told twenty-five (25) to -- oh, sorry.
3 I'm sorry, load forecast. I was thinking export price
4 forecast. Load forecast is different because in that
5 case we give -- we provide the full load forecast to
6 the Board.

7 What we don't provide is what is known
8 as the internal load forecast. The only difference
9 between the public load forecast and the internal load
10 forecast is the internal load forecast has Appendix A
11 attached to it. And Appendix A is all the information
12 we've com -- we've compiled on our major consumers,
13 and that's information in some cases that have been
14 obtained on the public record but is -- also contains
15 information that the major consumer has provided us
16 about their future plans, their expansion plans, their
17 -- what will happen in the event of a rate increase.
18 What they think they would do. That sort of
19 information.

20 And we have major consumers, they would
21 be MIPUG members, and they actually compete with each
22 other within the Province, and they have competitors
23 outside the Province. So that information has been
24 provided very much on a trust relationship with
25 Manitoba Hydro that's been built over the years that

1 we don't release it.

2 In the NFAT, the Board got Appendix A.
3 It -- but the parties did not, and we would be
4 proposing that same treatment in this case.

5 THE CHAIRPERSON: Okay. Thank you.
6 Now, according to this the first party is the Business
7 Council. Are they -- sorry, is somebody here for the
8 Business Council? Sorry, thank you.

9 MS. CARRIE HO: We currently -- we
10 don't have a position on this matter, so we're not
11 making any --

12 THE CHAIRPERSON: Okay.

13 MS. CARRIE HO: -- submissions.

14 THE CHAIRPERSON: Thank you. Dr.
15 Doctor (sic), you're showing as number 2.

16

17 SUBMISSIONS BY CONSUMERS' COALITION:

18 DR. BYRON WILLIAMS: I am. Well,
19 thank you for that great honour. So we'll try and
20 walk down this in a coherent manner. I'm not making
21 any promises.

22 Just as a starting point, our client
23 would -- would articulate a bias which I think we all
24 should share in this room to keeping as much
25 information public as possible. It makes for better

1 public dialogue, and it also makes for greater public
2 confidence. So I think that's something that I
3 suspect everyone in this room shares, but I think that
4 should be articulated.

5 Our client generally would have a
6 preference at a high level rather -- without having
7 any objection to the material being shared with the
8 IECs, contemplation in -- in the first part of a non-
9 disclosure process with -- with the experts and the
10 legal teams for the Intervenors. That would be
11 something they would prefer as a starting point.
12 You'll see it on this diagram which is before the
13 Board. It -- it looks to us that it's at the very
14 bottom of the equation.

15 So when I'm speaking of my client's
16 biases, that would be something that -- that they --
17 they think the Board should give mind to. The dilemma
18 for Hydro, and for the Board as well, probably would
19 be that, if -- if legal counsel signs a non-disclosure
20 agreement, it has to be consistent with their ethical
21 obligations. And to take instructions properly, there
22 has to be some level of information we can share with
23 our clients, as well. And that has historically been
24 a complicating factor.

25 But I do want to indicate my client's

1 preference, for as much public as possible, and for a
2 -- a broader web of non-disclosure agreements,
3 including experts and legal counsel to -- to
4 Intervenors. And that would be consistent with their
5 understanding of practice in some other jurisdictions.

6 As a general observation, I don't have
7 any evidence. I'm making an assertion today. Our
8 sense is, and it's -- this point's been made by Green
9 Action Centre in other proceedings, is that the level
10 of non-disclosure in Manitoba as compared to other
11 jurisdictions, it certainly has been asserted in the
12 past, is relatively high. And our clients -- our
13 experts have told us that same thing, that -- that
14 they're used to processes that -- that are -- are more
15 open.

16 I will indicate, at a practical level,
17 our client is already experiencing very significant
18 problems with the disclosure to date related to
19 information related to the export market and export
20 price forecasts, and currently is unable to form any
21 opinion based upon what is shared. There may be more
22 disclosure coming, but already, our client on a key
23 area of concern is -- is running into problems.

24 Now referring to the Hydro diagram, the
25 Board had a conversation with Manitoba Hydro. And

1 let's stick to the major capital side of the diagram
2 for a second. There is some historic disclosure in
3 terms of information related to major capital
4 projects.

5 Capital project justifications are one
6 (1) very important type of document that have
7 historically been provided. And our clients see no
8 reason why they should not continue to be com --
9 provided. So certainly to the extent that there is
10 any blanket order made with regard to major capital in
11 terms of flipping it to the IECs, our clients would
12 assert that capital program justifications, capital
13 project justifications should be excluded from that
14 order. And that relates to the efficiency of the
15 process.

16 And rather than us having to seek that
17 and have that information declined, the expectation
18 should be in this process that that information would
19 be available. And that's of information that
20 certainly Intervenors have had access to since the
21 2010, '11, '12 risk analysis and general rate
22 application.

23 We appreciate the flexibility on the
24 major capital side, and we agree with Manitoba Hydro
25 that the Board in any order should confirm that it is

1 open to Intervenors to -- to make a motion for further
2 disclosure in terms of information that's been
3 submitted in confidence to the IEC. And I hate to use
4 that acronym, but I can't remember what it means
5 anymore, I'm so tired today, so I apo -- apologize.
6 Independent experts, why can't I remember that,
7 consultants?

8 THE CHAIRPERSON: Yes. I think -- I
9 think it's independent expert consultants.

10 DR. BYRON WILLIAMS: Okay. So I
11 apologize for that. We do want to address two (2)
12 particular aspects of -- of what Manitoba Hydro said
13 today. And if you do have their letter of July the
14 11th available, page 8 of 9, towards the second last
15 paragraph. And I'm sure Mr. -- Mr. Haight will be
16 making this point, as well.

17 But you'll see the last sentence of the
18 second-last paragraph being:

19 "Keeping with the MGF's neutral
20 status, Manitoba Hydro expects that
21 it would not involve itself in the
22 cross-examination of witnesses or
23 otherwise attempt to prove or test
24 its conclusions through the
25 evidentiary process."

1 And with respect to Manitoba Hydro, and
2 -- and you heard some submissions today, our client
3 disagrees with that premise in its broad scope, its
4 blanket scope, and -- and we do that out of respect
5 for the independent expert consultants. Their opinions
6 that they will share in public with the Board will
7 rest upon certain factual -- factual conclusions. If
8 -- if the playing field gets changed by Manitoba Hydro
9 in terms of the facts, it certainly should be open to
10 legal counsel for the independent experts to clarify
11 Manitoba Hydro's evidence and to at least ask those
12 questions which are integral to maintaining the
13 factual basis for their assumptions.

14 So there may be other submissions that
15 counsel for the independent expert consultants may
16 make on this point. We would just caution about
17 restricting their scope too soon, too early.

18 The other request we would make in
19 terms of major capital review, that side of the
20 equation, is that in any order the Board makes, that
21 it will confirm the right of Intervenors to seek
22 further and better discovery from the independent
23 expert consultants in terms of their report.

24 And by that I mean, if the independent
25 expert draws a conclusion in their evidence, cites a

1 source, we may, on behalf of our clients, assert that
2 we need access to that source to -- to test the
3 foundations of their conclusions. Obviously, it will
4 be open to the Board to accept or rec -- reject our
5 recommendation, but we just want to con -- would --
6 would recommend that the Board make sure in its order
7 that it is clear there is a right to seek disclosure
8 and to compel further and better information from the
9 IECs.

10 Moving to the other side of the flow
11 chart, as -- as we understand Manitoba Hydro's motion
12 with regard to third-party information, or information
13 that is not part of the major capital review, we think
14 that there's two parts to the remedy. One (1) is
15 about halfway down on the right, a confirmation that
16 the Public Utility Board will accept documents in
17 confidence prior to adjudication of the Rule 13
18 motion.

19 And our clients have no objection to --
20 to that part of the remedy. They would perhaps
21 suggest that in support of that motion by Manitoba
22 Hydro, it should be accompanied by a -- clearly a -- a
23 list of the documents for which they're -- they're
24 seeking confidentiality, as well as any correspondence
25 from the third party asserting that privilege, so that

1 we have a proper evidentiary basis for the -- for the
2 motion.

3 And the Chairperson's questions this
4 afternoon of Manitoba Hydro make that point to a
5 certain degree. With some of these parties, whether
6 those are bond rating agencies, or perhaps companies
7 that sell export price projections in the marketplace,
8 it's really the price that's attached to their
9 information that is at issue, whereas others, perhaps
10 a large industrial load forecast, or a contractor
11 seeking a major bid for a turbine or something I don't
12 understand, there are legitimate proprietary interests
13 that they would -- they would not sell, because
14 they're so integral to their business in -- interest.
15 So we certainly would want to see a justification,
16 including the evidence relied upon Hydro that this
17 third party is asserting a privilege.

18 The other element of the third-party
19 motion as we understand it from Manitoba Hydro is that
20 they request kind of a preliminary ruling pursuant to
21 Rule 13.5, that in the event that the Board suggests
22 that there's -- there should be public con --
23 disclosure, there is a right of Manitoba Hydro to
24 request the return, and actually, as we understand it,
25 to have those documents returned back.

1 Now, our client, per se, does not
2 object to that advice. We see it as a way to move
3 things forward. The problem we do flag for the Board,
4 and this may be a problem for another day, is if the
5 evidence withdrawn by Manitoba Hydro is central to
6 their assertions in the hearing, what happens to the
7 evidentiary -- what happens to those assertions?

8 And the most important example of that
9 that comes to mind are the bond-rating assertions. If
10 Manitoba Hydro seeks to withdraw evidence from a bond-
11 rating agency and still to leave on the record an out-
12 of-context quote from the bond-rating agency, that
13 would be significant prejudice.

14 This issue is a little too tortured for
15 me to figure out whether that needs to be resolved
16 till today, but that's just something our client
17 suggests needs to be kept -- we need to be mindful of
18 in the future.

19 And if I could just have one (1)
20 second, I'll just confer with my colleague. And
21 otherwise, I think those are the end of my
22 submissions.

23

24 (BRIEF PAUSE)

25

1 DR. BYRON WILLIAMS: Those are our
2 submissions.

3 THE CHAIRPERSON: I have a question.
4 You made reference to the Rule 13 motion, and you want
5 the -- the document for justification for not
6 providing the information.

7 Are you talking about the entire
8 document, or are you talking about the clause from the
9 document that says you can't release it?

10 DR. BYRON WILLIAMS: Yeah. And I was
11 -- I apologize for being unclear. We're -- we're not
12 interested in the entire document.

13 And I -- just for further clarity, we
14 understand there's two (2) different ways that that
15 assertion of non-disclosure from the third party might
16 come. It might be in an actual contract --

17 THE CHAIRPERSON: Right.

18 DR. BYRON WILLIAMS: -- or our
19 understanding is that Manitoba Hydro has been engaged
20 in a dialogue with some of these parties, including
21 the bond-rating agencies. So we're not seeking the --
22 the whole document.

23 THE CHAIRPERSON: Okay. And I guess
24 where I'm a little confused is --

25 DR. BYRON WILLIAMS: So am I, Mr.

1 Chair.

2 THE CHAIRPERSON: -- your -- your
3 discussion about the IEC and cross-examination. I'm
4 just going through my notes. You made the comment
5 that you think that the IEC should be able to clarify.

6 Is that right?

7 DR. BYRON WILLIAMS: Yeah, and I was
8 trying to -- to make two (2) comments. One is our
9 clients caution about unduly constraining the -- the
10 right of legal counsel for the IEC as currently
11 represented in the Hydro letter.

12 And then secondly, at the bare minimum,
13 Mr. Chair and members of the panel, I think there is a
14 difference between an aggressive cross-examination for
15 the purposes of reinforcing your case, and then
16 questions of clarification that confirm factual
17 evidence important to your assertions.

18 It might be a fine line, but that was
19 kind of the thinking, and -- and I'm not sure that I'm
20 capable of elaborating upon it. Greater -- we think,
21 at a bare minimum, Manito -- the counsel for the
22 Independent Expert Consultants should be able to pose
23 questions of Manitoba Hydro as they relate to key
24 factual assumptions made by the Independent Expert
25 Consultants.

1 THE CHAIRPERSON: But are you talking
2 about clarification or are you talking about cross-
3 examination?

4 DR. BYRON WILLIAMS: If you're talking
5 about the mechanism, Mr. Chair --

6 THE CHAIRPERSON: Yeah.

7 DR. BYRON WILLIAMS: -- it -- it could
8 be done through -- through Information Requests. But
9 again, there may be times where I -- I -- and there's
10 a risk that the -- there's a disagreement on the
11 factual assertion. So I'm thinking cross-examination.

12 THE CHAIRPERSON: Okay, because the
13 problem I have is -- I believe that Ms. Ramage said:
14 "The IEC should not participate in
15 cross-examination of Manitoba Hydro,
16 but can assist in clarification."

17 So I'm trying to figure out -- sounds
18 like the two (2) of you are very close, and we've got
19 this thin line in the middle. And I'm just wondering
20 if the -- if the Board actually needs to, you know,
21 make a decision.

22 And we'll hear from Mr. Haight whether
23 we make -- need to make a decision now or if that thin
24 line in the middle is the point that we're going to be
25 subject to motions at the time of the hearing when we

1 actually have the factual case before us and we know
2 exactly what we're talking about.

3 You know, it's -- if we come up with a
4 hundred different scenarios, the two (2) of you may
5 agree on ninety-five (95) of them, and then we're
6 dealing with the five (5). I just don't know what
7 those five (5) are.

8 DR. BYRON WILLIAMS: And I think your
9 comments are well taken. And ultimately, the thrust
10 of our comments, we should be preserving that
11 opportunity for counsel for the IEC to -- to protect
12 their witnesses. Thank you.

13 THE CHAIRPERSON: Thank you. Is -- is
14 counsel for KAP here? For Keystone Agricultural?
15 They indicated --

16 MS. DAYNA STEINFELD: Mr. Chair, if --
17 if I can, just on the record; so, Green Action Centre
18 has informed Board counsel that they're not taking a
19 position. GSS/GSM has similarly expressed that
20 they're not making submissions. They feel any
21 concerns they may have will be adequately addressed by
22 other Intervenors.

23 Keystone Agricultural Producers, we
24 don't believe -- although they were notified of the
25 opportunity to participate by written, or -- or

1 comment, or by attending today, we don't believe we
2 have received anything from them, and they are not in
3 attendance today.

4 THE CHAIRPERSON: Mr. Orle...?

5

6 SUBMISSIONS BY MANITOBA KEEWATINOWI OKIMAKANAK:

7 MR. GEORGE ORLE: Thank you, Mr.

8 Chairman. I always take my doctor's advice, and I'm
9 going to take the advice of Dr. Williams today.

10 We also see transparency as being a
11 very important factor. For the purpose of -- of our
12 experts and the -- and the part that we play in these
13 proceedings, I think that we would want to see a list,
14 first of all, of -- of what documents are -- are being
15 claimed as -- as being non-disclosed, or have limited
16 disclosure, some description of them, and -- and also
17 some description as to what the parameters of the
18 confidentiality are before we make any submission in
19 regards to -- to those particular documents.

20 Our expert would want to see what's
21 being held back, first of all, before deciding whether
22 it's necessary or not, and if they're documents that
23 we don't consider needed for our part in the process,
24 we're not going to make any -- any submission in
25 regard to how that document should be treated.

1 And it's a matter that just came into
2 my mind as I was going through this material, that I'm
3 -- I'm fairly new to this process, only having been
4 here for a few years, but I can't believe in -- in
5 reinventing the wheel on something as important as
6 this. There -- there must be a process for boards
7 such as the Public Utilities Board which exists, to my
8 knowledge, all across Canada, that this would not be
9 the first time this issue has come about.

10 And if it's -- if there's a way of it
11 being dealt with in a consistent and uniform fashion,
12 I think we would all benefit from that. And I just
13 haven't had the ability or -- or the knowledge to be
14 able to see what -- what's done in other
15 jurisdictions, and if what we're asking for is -- is
16 untoward, or whether it's something that -- that may
17 be taken as for granted in other -- in other
18 jurisdictions.

19 I only raise that as a comment on the
20 process, Mr. Chair. I -- I don't have a solution to
21 that.

22 THE CHAIRPERSON: Thank you, Mr. Orle.
23 Mr. Hacault...?

24

25 SUBMISSIONS BY MANITOBA INDUSTRIAL POWER USERS GROUP:

1 MR. ANTOINE HACAULT: Merci. I'll
2 start with what I think are some fundamentals with
3 respect to the Board's current rules and legislative
4 authority. And the reason I do so is, in my own mind,
5 I was trying to figure out, Well, is there already
6 kind of an obligation, or an order, or a request that
7 has to be complied with, and who should be making the
8 motion to have it confidential, or are we changing the
9 entire process provided by your rules and your
10 legalisation?

11 So I start with The Manitoba Hydro Act,
12 which, under Section 39(10)(d) says that:

13 "The PUB shall pro -- that the
14 parties on request of the PUB shall
15 provide the PUB with further
16 information incidental thereto as
17 the Public Utility Board may
18 require."

19 That's part of the application, so part
20 of what the Board requires is minimum filing requests.
21 And there's a section in your rules, Section 23(e),
22 that says the applica -- application shall contain all
23 the information requested in the minimum filing
24 requirements.

25 And the reason I get down that road is

1 the Board asked two (2) filing requirements with
2 respect to some of the documents that are being
3 discussed. Firstly, under minimum filing requirement
4 72, it was a report called 'Boston Consulting'. It's
5 been referred to by Manitoba Hydro in some of its
6 material, but hasn't been produced yet.

7 The second category which is subject of
8 a minimum filing request is 78. And it requests the
9 reports of the bond rating -- or the rating agencies.
10 So I believe we have DBRS, but there's one other
11 that's perhaps going to be filed with the Public
12 Utilities Board; Standard & Poor's, but not given to
13 the parties. And these are types of reports we've had
14 in the past.

15 And usually if there's an order of a
16 tribunal and a request that has effect of law, it has
17 to be complied with. If -- DBRS, if it wants to
18 challenge the validity of the regulation or of the
19 legislation authorizing this Board to make that
20 request of relevant documents, it has the opportunity
21 to come here and say, no, I disagree.

22 And I also have some concerns about the
23 fairness in -- especially in the rating agency
24 information of not having that information for one (1)
25 of the first times when all of the sudden it's become

1 -- I shouldn't say all of the sudden. To a larger
2 extent, what those rating agencies have said has
3 become the source of a justification for greater rate
4 increases saying, Well, listen, ho, ho, we've got a
5 rating agency that's saying Hydro might affect the
6 financial rating of the Province of Manitoba

7 So the Board, it looks like, is heading
8 down the following road which I believe it ought to
9 carefully consider before going down this road. If
10 you have professionals giving a professional opinion
11 like the ones that you'll have testify before you, we
12 get their reports. Do we require them to testify?
13 Absolutely. Why? Because it's critical that when
14 you're dealing with somebody with specialized
15 knowledge that purports to have this knowledge through
16 experience, through specialized analysis, people have
17 to have the opportunity to test to that.

18 And -- and link -- legal language, we
19 said, Well, it's hearsay. Hearsay, you know, you got
20 to be careful. Well, I have a binder of cases which
21 I'm not going to share today, but -- which says that,
22 if it's a main issue in a hearing and you have an
23 opinion on that issue and it's referenced in the
24 materials, that person should be here testifying;
25 otherwise, we're just left there with allegations,

1 what if, what if. We don't know what the bonding --
2 well, why not get the guy right there and say it?

3 Now, we're going further down the road
4 where it appears that one (1) of the reports will be
5 only available for the PUB and not to the other
6 parties, so we won't be able to test it. And one (1)
7 of the three (3) sets of -- the other remaining report
8 that we usually get won't even be provided, and yet it
9 appears -- apparently business counsel thinks it's --
10 the whole rating of the province is going to be put in
11 danger by what's happening to Manitoba Hydro. There's
12 these ratings that are out there. It appears to be a
13 really important issue, yet we're going to get
14 restricted access to relevant information that's the
15 foundation of that very argument.

16 So just be very careful in setting some
17 kind of a process which restricts the ability to help
18 you understand whether or not -- what kind of
19 information tho -- did those people get. Where is the
20 presentation that was made to them? What did they
21 take into account? If we don't even see the report,
22 and if they aren't here. We can't help the Board
23 understand how that thought process worked, if at all
24 and what lack of information there was or if the
25 information was complete.

1 There's other reports that in the past
2 have been produced. For example, in the Needs For And
3 Alternatives To process there was a report by a
4 company called Brattle Group, I believe it was. And
5 it was dated, I think, in March of 2013. And it dealt
6 with -- it was Hydro information, exports, and MISO.

7 So we do have precedents when it's
8 important for the Board to understand things that
9 we're getting information that Hydro got from
10 consultants to be able to test that information, to
11 know what the information was, especially if it's key
12 to the arguments that Hydro's making.

13 They're changing load -- load
14 forecasts, their export prices. And if it's key to
15 that and they have important reports, at least in the
16 NFAT, the Needs For and Alternative To hearing, we
17 actually had access to those reports and that
18 information to make better decisions.

19 The -- some other things that we've had
20 in the past -- and I don't want to it to be kind of a
21 reverse onus thing -- is capital project
22 justifications, just because it relates to Bipole III,
23 and Keeyask, and its major capital.

24 I would encourage the Board to follow
25 the processes we've had before. We used to get those

1 in Information Requests. They didn't go to the
2 independent expert consultants.

3 They can have them -- that's not the
4 point -- but I don't think we need to set a new
5 process for things that were already being provided to
6 us in the past just because it relates to that big
7 category of documents. These documents are five (5)
8 or six (6) pages. They're produced internally.
9 They're approved by various levels of Hydro to deal
10 with it.

11 I'm going to switch to a couple other
12 points that others have dealt with. Getting counsel
13 to sign non-disclosure -- yes?

14 THE CHAIRPERSON: Sorry. Can I inter
15 -- interrupt you for a second? You were talking about
16 these reports that were provided for NFAT.

17 MR. ANTOINE HACAULT: Yes.

18 THE CHAIRPERSON: Is -- is your
19 position now that those reports were provided and now
20 they're not being provided?

21 MR. ANTOINE HACAULT: Well, my
22 understanding is that there's internal reports. And I
23 don't know if it's from the same company or not.
24 That's -- that's going to be another thing I'm going
25 to ask. I'm going to ask for a list --

1 THE CHAIRPERSON: Okay.

2 MR. ANTOINE HACAULT: -- because if
3 it's a list, and it's a Brattle report that they
4 relied on, and we've seen one in the past, well,
5 what's the problem?

6 But without knowing whether or not --
7 and it may not be. I've got no -- the problem is, I
8 can't comment on that right now, because I don't know
9 what the specific reports are.

10 THE CHAIRPERSON: But -- but I guess
11 the question is: Do you want a list of every report
12 ever done for the major -- like, that have been
13 provided for the major projects? I'm trying to figure
14 out what this -- what the list of reports are.

15 MR. ANTOINE HACAULT: No. This is the
16 export prices.

17 THE CHAIRPERSON: Okay. Okay.

18 MR. ANTOINE HACAULT: Subject -- it's
19 really not a capital project --

20 THE CHAIRPERSON: Yeah, okay.

21 MR. ANTOINE HACAULT: -- issue. As I
22 said in my initial comments, when I first appeared in
23 front of this Board, it's not expected that Manitoba
24 Industrial Power Users Group is going to delve into
25 any detail on just like, you know, Was this tender the

1 tender that should have been accepted? Was -- you
2 know, did the -- was the process on contracts
3 efficient or not? That is not something we're going
4 to be dealing with.

5 And I can fully understand and
6 appreciate Hydro doesn't want to redact tens of
7 thousands of pages and have some better process to
8 deal with that. We have no objection to that, and if
9 it makes the process easier for independent expert
10 consultant to do his or her work, great.

11 THE CHAIRPERSON: So the Brattle
12 reports that are -- were expert reports?

13 MR. ANTOINE HACAULT: Correct.

14 THE CHAIRPERSON: Okay. That -- that
15 was the piece I didn't miss. I -- I heard, "Brattle
16 reports;" I didn't know that this was an expert.

17 MR. ANTOINE HACAULT: Yeah. They were
18 a Hydro report, not an independent expert consultant.

19 THE CHAIRPERSON: Okay. Thank you.

20 MR. ANTOINE HACAULT: Thank you for
21 that question. That -- hopefully, I've answered it.
22 Okay.

23 The -- I just want to make a small
24 comment on having counsel sign non-disclosure
25 agreements and having access to confidential

1 information. There's pros to that, but there's also
2 challenges.

3 If I reflect on cross-examinations, and
4 all of a sudden there's a number that comes out, I --
5 do I have to kind of pause before each question?

6 Okay, now did I get that in page so-and-so that was
7 redacted, or did I get it in page so-and-so that was
8 unredacted.

9 So while it's useful to try and go
10 around some of the confidentiality issues by getting
11 us to sign non-disclosure agreements, it's a challenge
12 for cross-examination. I can, and I do usually say,
13 If I'm asking you a question, Manitoba Hydro witness,
14 that involves confidential let me know. I can try and
15 do that. But what if I blurt out something, But you
16 just said this and I saw this?

17 So it -- it's going to make it
18 challenging for counsel. The other thing that's
19 challenging is if I get the information and I have to
20 get instructions from the client, how do I get
21 instructions that say: Well, I've seen information.
22 I can't tell you what it is, but as soon as I start
23 talking about it I've kind of blown the
24 confidentiality because it exists.

25 So it's hard to get instructions from

1 clients. So that's a ethical or a problem that --
2 that we face, and it's a challenge. So although
3 there's pros to doing it, there's also challenges, and
4 I just want to put that out there.

5 The -- I've mentioned a list of
6 documents, especially -- we're concerned with, I'm
7 going to say, the non-major capital sets of documents.
8 I don't need to know each subcontract, date of it, et
9 cetera. I don't know that it would be that long.
10 Probably you could list a hundred documents, we do it
11 all the time in court cases, and the volume of the
12 documents is maybe a hundred thousand pages but the
13 listing is a hundred.

14 So that the listing, if we're going to
15 be talking about things, is useful for us to know
16 because we've got no idea whether we'd object or have
17 a concern about a particular document being shown as
18 confidential if we don't even know what it is.

19 The other thing we think would be
20 useful if we're going to get into deciding whether
21 there's an issue or a problem, is knowing what the
22 problem is. What request did Hydro make, and what
23 problem or refusal was given by the third party? It
24 may be like in the case of Investors Wallace
25 Proprietary (phonetic) and ERCO Worldwide competes

1 with Chemtrade, and if Chemtrade knows ERCO
2 Worldwide's plans, you know, that's a problem.

3 But at least then I know what the
4 problem is, and I can address it. The other point I
5 think I heard Ms. Ramage indicate was that if there's
6 a ruling on process to try and expedite things for the
7 Independent Expert Consultants, it wouldn't affect our
8 normal rights to try and get the information.

9 I wouldn't want it to be a ruling which
10 all of a sudden somebody would throw in my face and
11 say: Well, no, no. We've dealt with all these big
12 categories, and you agreed that this is how it was
13 supposed to be dealt with so you don't have an
14 opportunity to try and get it through any process. I
15 don't think I've heard anybody say that.

16 I just want to make sure that we can
17 get the information we think is important for this
18 Board in front of the Board, and not be caught in a
19 situation where there's kind of been a blanket ruling
20 on a process which changes the normal rules that the
21 Board has passed. I don't think it's anybody's
22 intention to amend the rules that already exist, and
23 curtail our rights in any way.

24 On the issue of cross-examination, I
25 view it as a fairly simple solution. Independent

1 expert counsel can say: I'd like the permission of
2 the Board to ask questions in the following area. I
3 think it's important for the report, can explain it.
4 And it seems to me that's the easiest solution rather
5 than try to say, well, it's got to be questions of
6 clarification or questions of cross-examination.

7 If counsel to the independent
8 consultant feels it's important because it deals with
9 a factual foundation and it needs to be dealt with, he
10 can ask the Board. The Board can rule at that point
11 whether they think it's allowable or not, and we can
12 proceed with that area of questioning. If it seems to
13 go too far, I'm sure myself or Ms. Ramage or somebody
14 will say 'objection'.

15 But I -- I think we shouldn't trap
16 people into a particular mode of how we're going to do
17 -- deal with the hearing. It would be premature to do
18 that, to do a pre-ruling on exactly how that was going
19 to occur.

20 I'll circle back to the very beginning.
21 I just question when there's actually a legislative
22 requirement, and a rule, and a filing request, which
23 is part of the minimum filing requirements in the
24 application, whether there has to be kind of a reverse
25 onus, which is what I understand is being proposed

1 here.

2 We already know there is an order.
3 It's minimum filing request 72, minimum filing request
4 78. We can tell those third parties, It's there.
5 It's a requirement under the -- the Manitoba Hydro
6 Act. It's a requirement under the rules that it's
7 part of the application that has to be filed.

8 If you don't like it, come and show up.
9 I don't see why we would have to go through a whole
10 motion process, that the documents would go back to
11 Hydro, that the PUB would, what, a second time say,
12 Well, I sent you MFR, which is a legislative
13 requirement and a rule requirement. You don't have a
14 discretion. If it's a relevant document and I've told
15 you to produce it, you should produce it.

16 But we sent it back and the PUB has to
17 do a second order repeating what it already did in a
18 mandatory order that's required under the legislation
19 and its rules. I think that practically ends up
20 changing your rules, and I don't think we should be
21 changing your rules in this process to the extent that
22 there's things that are part of minimum filing
23 requirements.

24 They should follow that process. And
25 if there's another process that needs to be followed,

1 again, with the Order in Council, there is a
2 requirement. It's a legislative requirement. If --
3 how better can it be said than an Order in Counsel?
4 What additional force of law is the Board going to
5 have by repeating a request that's already made in an
6 Order in Counsel that requires certain things to be
7 produced.

8 It was to avoid going kind of a reverse
9 onus. I know we want to try and simplify things. But
10 in simplifying things we shouldn't be undoing
11 mandatory rules and mandatory Orders in Counsel. So I
12 just urge the Board to be mindful of that when it
13 decides how it's going to deal with process.

14 I'd be pleased to answer any questions.
15 Those are all my comments.

16 THE CHAIRPERSON: Thank you. Any
17 questions...? Thank you.

18

19 (BRIEF PAUSE)

20

21 THE CHAIRPERSON: There. I'm just
22 going to ask Mr. Haight and Ms. Ramage if you can
23 advise how long you think you'll be, because I'll
24 decide if there's going to be -- we'll take a break
25 now, or continue.

1 MR. BILL HAIGHT: Less than five (5)
2 minutes, Mr. Chair.

3 THE CHAIRPERSON: Ms. Ramage...?

4 MS. PATTI RAMAGE: Five (5) to ten
5 (10).

6 THE CHAIRPERSON: Okay. Well, let's
7 keep going. Mr. Haight...?

8

9 SUBMISSIONS BY INDEPENDENT EXPERT CONSULTANTS:

10 MR. BILL HAIGHT: Thank you, Mr.
11 Chair, for this opportunity to address that one (1)
12 issue that was raised by Manitoba Hydro regarding the
13 role of counsel for the IEC in these proceedings. I -
14 - I will echo some of the comments that have been --
15 already been made by counsel and by you, Mr. Chair.

16 Firstly, I think that the request
17 premature. At this juncture disclosure has not yet
18 even been made to the IEC. An NDA has been finalized
19 and will be signed, I expect tomorrow, but we're so
20 early in the process for counsel to agree to a blanket
21 restriction, or for the Board to have its hands tied
22 by not permitting full and complete examination of an
23 expert that it has retained, I think is something that
24 is very premature.

25 We can't be making a decision when we

1 don't know what the facts might be. So it's
2 premature, and relatedly, it's not necessary, because
3 all that needs to occur is, as suggested by Mr.
4 Hacault, is -- is that, if, at some point in time, a
5 question needs to be asked by counsel to IEC, who has
6 special knowledge because of his assistance with the
7 preparation of the report and his communications, his
8 privileged communications with his own client, then
9 all that needs to be done is to make that request.

10 I can tell you that I don't intend to
11 try to assume the role of an Intervenor and be
12 examining and cross-examining, I don't. That wouldn't
13 -- that's not the role that I'm here to play. But, at
14 the same time, I see my role as very similar as to the
15 role of your expert. And you have retained an expert
16 to attempt to assist you with some serious issues that
17 you need to be determining.

18 And if I can any way assist in that
19 regard, then I intend to make the request of you to
20 say, I think I can be of assistance here. I have an
21 area of examination, cross-examination, whatever it
22 might be, for this particular witness, emphasizing
23 that this particular witness does not restrict only to
24 Manitoba Hydro. This is not an exercise of -- of
25 trying to in any way challenge only Manitoba Hydro

1 experts. There may be other witnesses that will say
2 something that may, for example, be contrary to an
3 assumption that is being made by the independent
4 expert.

5 And, as the panel knows, expert opinion
6 is based upon assumptions made. And so if I feel that
7 that would need to be challenged, then my goal would
8 be to say I request permission, and here is why I
9 think it's relevant to your function, and -- and I'll
10 do so on a case-by-case basis, so -- so it's not
11 necessary. It's premature.

12 And then the final point, and which
13 I've touched on briefly, but I'll say it again, I
14 think it's contrary to the Board's intention in hiring
15 an independent expert. It has sought advice,
16 essentially, through an opinion of an independent
17 expert who has special knowledge in an area that the
18 Board doesn't have, and so it is looking for advice.
19 It is looking for an opinion, and -- and so you
20 wouldn't want to in any way restrict that ability.

21 And -- and by restricting that expert's
22 own counsel in -- in conducting what is -- would only
23 be necessary examinations as determined by this Board
24 on a case-by-case basis, it's actually making an order
25 that's contrary to its intention when it hired an

1 independent expert.

2 So -- so those are the three (3)
3 comments that I wish to make. I -- I think to make an
4 order right now would not be the proper way for this
5 Board to get at its goal, and to do so on a case-by-
6 case basis would be the appropriate thing to do.

7 The only comment I will say relatedly
8 to that is that obviously, I will have to have
9 discussion with your counsel about witnesses, who they
10 will be, when they will be called, what they may or
11 may not say, you know, general, we'll say discussions,
12 which I don't ask for anything formal, just a -- a for
13 -- an informal discussion which will assist me in
14 knowing about -- about preparations, that sort of
15 thing.

16 So -- so those are my comments. Thank
17 you very much for the opportunity.

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

20

21 REPLY BY MANITOBA HYDRO:

22 MS. PATTI RAMAGE: Yes. There's a --
23 a couple of points of clarification I'd like to make.
24 First off, I think counsel for MIPUG has maybe gotten
25 ahead of himself. We're asking for a process here to

1 deal with third-party information. We went straight
2 into the third-party information.

3 I don't think counsel properly
4 understands what information we intend to file, or
5 don't intend to file, or the reasons.
6 The -- the example of the Brattle Group was given.
7 And at risk of, you know, going over the cliff on
8 this, the export price forecast, which was the one I
9 started to mistakenly address, are again, purchase
10 price for -- purchase forecast.

11 Brattle was put in as a witness for
12 Manitoba Hydro. The other forecasts were not released
13 to any parties. They were released to the IEC in the
14 exact process we're talking about here. So just to
15 clarify that point, that's how it was done there, and
16 that's exactly what we're looking for in this process.

17 And just as an aside and -- well, I'll
18 -- no, I'm going to stop there. But I can tell you
19 that we've prepared -- we've been working on a motion
20 on the individual documents that we're talking about,
21 or responses. I have it here. That's where we're at
22 so far. It's taken five (5) weeks to get to this
23 point.

24 If we have to start documenting what
25 clause we're relying on specifically and/or the

1 information exchange, we're going to be adding to the
2 time. The -- the process that we are looking at is
3 identifying the MFR that -- that's in question, or a
4 group of MFRs, identifying the affected documents, or
5 type of information, identifying the status of where
6 we're at with that document. It could be
7 consent/received, consent/not received, something like
8 that.

9 Then providing a justification for its
10 confidentiality, meaning why is it -- why is it
11 confidence (sic), in -- in just a couple of lines, not
12 reproducing sections of contracts. If we get to
13 reproducing sections of contracts, we are
14 significantly delaying the process. And I think in a
15 lot of this, it will be readily apparent why it's not
16 -- why -- why it can't be released on the public
17 record without having to go into contractual
18 provisions.

19 Again the comment on NDAs. Also think
20 that one's premature at this stage. What we're
21 looking for is a process just to get the third party
22 information into your hands to get it into the hands
23 of the IEC. But in case the Board is looking at that,
24 Manitoba Hydro would comment that NDAs have been
25 rejected in the past. They've been rejected for good

1 reason. One (1) is when we get these type of
2 consents, they're not consistent with the consent.
3 Another is that we have Intervenors in this hearing
4 and in previous hearings who actually have an interest
5 in the information that's -- that's being held in
6 confidence.

7 And there are Intervenors that Manitoba
8 Hydro if -- we're ultimately subject to the Board, but
9 we would say we don't -- we won't release it to that
10 party. That party -- you know, it doesn't make sense.
11 They may have an interest in the contracts. We have -
12 - we have Intervenors here who were part of the
13 construction process, or represent groups that are
14 part of that process. And to release those kind of
15 documents to them, that -- under an MDA just wouldn't
16 be acceptable.

17 It's not what is done in our counter-
18 parties' jurisdictions. They don't find it acceptable
19 to have an NDA of the type that has been proposed in
20 this jurisdiction. For example, in Minnesota, they
21 immediately ask us what's the -- the penalty, and it's
22 -- the penalty is you -- often, you have to give the
23 information back, or something like that.

24 In Minnesota it's, you go to jail. So
25 they don't find information -- our NDAs acceptable in

1 terms of what those penalties are, and we haven't been
2 able to come up with a solution for that that -- that
3 works for this Board and for the industry we work in.

4 In terms of the IEC role, I would just
5 clarify our position, and I think you hit it on -- on
6 -- the nail on the head, we're -- we're open to
7 questions of clarification. It's the aggressive
8 cross-examination and that adversarial role we're
9 concerned with. We don't believe the IEC's role is to
10 advocate. The IEC's role is to provide its opinion.
11 The IEC's role is to stand on -- is then to stand on
12 its report and explain it, but not to advocate and
13 prove that it's right.

14 It may be that this Board rejects the
15 IEC's opinion. It may be parties agree/disagree. But
16 it's not here to -- to advocate that. It -- but it's
17 here to provide the Board with sound reasons for --
18 for its opinion.

19

20 (BRIEF PAUSE)

21

22 MS. PATTI RAMAGE: Mr. Hacault also --
23 he spoke to the bond rating agencies. He spoke to the
24 Boston Consulting report. I would say, again, that's
25 all part of our future motion, those things.

1 The -- I can tell you Boston Consulting
2 is in a redaction process at -- at Manitoba Hydro, so
3 let's wait and see what comes out. That's not part of
4 this motion today. And so my concern is that we not
5 start addressing things until we actually see what
6 Manitoba Hydro is filing.

7 Similarly in the bond-rating agencies,
8 we have one (1) on the record, DBRS. We have two (2)
9 who declined -- outright declined. We've got them to
10 the point that the --they're allowing the Board to see
11 them. Let's see what -- what those say and let
12 parties address them on an individual basis and
13 according to what their needs are, and then let's deal
14 with what happens if it's not satisfactory at that
15 point, once you have the information in front of you,
16 but not to do it today.

17 We are -- to be clear, we are not
18 proposing to set a new process for information that's
19 received in the past. That's -- that's not in any way
20 suggested or intended as part of this process.

21 We don't expect that -- we expect that
22 parties will get the information they received in the
23 past unless there is a reason for it like we have in
24 the bond-rating agencies which is outside of our
25 control. And we are advising the Board of -- of that

1 information.

2 When -- in terms of a list of documents
3 as requested by Mr. Hacault, I would fully expect, if
4 it's in response to an IR or an Information Request or
5 minimum filing requirement, a list would be provided.

6 But we are not -- and I want to be
7 clear on this point with the IEC, we're not proposing
8 to provide a list of all the documents they are
9 looking to see 'cause we don't know what they are.

10 They will be undoubtedly voluminous,
11 and undoubtedly, based on past experience, they may
12 see a document and immediately say, It's not relevant.
13 So to provide a list doesn't make sense, but I suspect
14 by the time the IEC is done, it -- that list would be
15 in the thousands, not the hundreds, and it may be the
16 tens of thousands. I don't know.

17 And finally, just with -- with respect
18 to MIPUG's comments on, If you don't like it, come and
19 show up and explain why, that's exactly what this
20 process is trying to avoid because I can't guarantee
21 they're going to show up in front of this Board. They
22 may decide to go straight to Broadway, and we're
23 trying to avoid dealing with that by working with
24 these parties and getting their consents.

25 And -- and something that -- that I

1 haven't said that I guess was in the motion but we
2 have to remember, Manitoba Hydro has to continue to
3 work with these parties. They all provide us -- they
4 -- we have to -- sorry, we have to continue to be able
5 to work with these provinces (sic).

6 We don't want them -- or with these
7 parties. We don't want them to avoid the Province of
8 Manitoba because they feel their information isn't
9 protected. So we're trying to work with them and work
10 with the Board at the same time and come up with a
11 process that satisfies everyone.

12 We're not trying to keep information
13 out of anyone's hands. I think, Mr. Williams, we can
14 echo his -- his comments. Manitoba Hydro -- this
15 process works for us if it's transparent. It doesn't
16 work for us if parties say it isn't transparent. It's
17 just an unfortunate reality that there's certain
18 information that can't be shared. And subject to any
19 questions...

20 THE CHAIRPERSON: Thank you. Any
21 questions?

22

23 (BRIEF PAUSE)

24

25 THE CHAIRPERSON: No? Thank you, Ms.

1 Ramage.

2 Okay. This will conclude the
3 discussion on the issue of commercially-sensitive
4 information. We'll resume the hearing tomorrow at
5 9:00 a.m. for the reply of Manitoba Hydro to the
6 submissions given. Thank you, all. This meeting's
7 adjourned.

8

9 --- Upon adjourning at 2:57 p.m.

10

11 Certified correct,

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14 _____

15 Cheryl Lavigne, Ms.

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