

BRITISH COLUMBIA UTILITIES COMMISSION
IN THE MATTER OF THE UTILITIES COMMISSION ACT
R.S.B.C. 1996, CHAPTER 473

And

Insurance Corporation of British Columbia
2017 Revenue Requirements Application
Project No. 1598929

Vancouver, B.C.
December 5th, 2017

Procedural Conference

BEFORE:

B. Magnan,	Panel Chair/Commissioner
D. Enns,	Commissioner
R. Revel,	Commissioner

VOLUME 1

APPEARANCES

P. MILLER	Commission Counsel
M. GHIKAS	Insurance Corporation of British Columbia (ICBC)
R. LANDALE	Self
J. QUAIL	Movement of United Professionals (MoveUP)
L. WORTH K. FEENEY	British Columbia Old Age Pensioners' Organization, Active Support Against Poverty, Disability Alliance B.C., Council of Senior Citizens' Organizations of B.C., Together Against Poverty and The Tenant Resource and Advisory Centre (BCOAPO)
F. WEISBERG	Toward Responsible Education Attentive Driving (TREAD)
T. LITMAN	Self

INDEX

PAGE

SUBMISSIONS BY MR. GHIKAS4
SUBMISSIONS BY MS. WORTH15
SUBMISSIONS BY MR. QUAIL18
SUBMISSIONS BY MR. WEISBERG21
SUBMISSIONS BY MR. LANDALE45
SUBMISSIONS BY MR. LITMAN51
SUBMISSIONS BY MR. MILLER58
REPLY BY MR. WEISBERG61
REPLY BY MR. QUAIL65
REPLY BY MS. WORTH68
REPLY BY MR. GHIKAS69

INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE
B-3	OFFICIAL REPORT OF DEBATE (HANSARD), NOVEMBER 7 th	8
B-4	GOVERNMENT OF B.C. PRESS RELEASE DATED NOVEMBER 1 st , 2017	11
C5-3	VANCOUVER SUN ARTICLE	42

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VANCOUVER, B.C.
December 5th, 2017

(PROCEEDINGS COMMENCED AT 9:01 A.M.)

THE CHAIRPERSON: Please be seated.

Good morning, ladies and gentlemen, and welcome to the procedural conference for ICBC's 2017 revenue requirements application. My name is Bernie Magnan, I am Chair of the panel this year, and with me are Commissioners Rich Revel and Doug Enns.

I would like to remind all present of the scope issues, making sure that you stay within scope in your presentations and comments, and follow the scoping that has been put out by this panel and by the government in the OICs.

Representing staff today are Bonnie Guzman, Leon Chung, and also Ian Jarvis and Yolanda Domingo from the BCUC, and Paul Miller is the Commission counsel. The Hearing Officer is Hal Bemister.

So at this point I'm going to turn the meeting over to Paul Miller for the introduction of those present, and if you would state your name and also who you represent, that would be appreciated.
Mr. Miller?

MR. MILLER: Thank you, Mr. Chair. The first in the order of appearances is the applicant, Insurance Corporation of British Columbia.

1 MR. GHIKAS: Good morning, Mr. Chairman, Commissioners.
2 Matthew Ghikas, G-H-I-K-A-S, appearing on behalf of
3 the Insurance Corporation of British Columbia.

4 With me this morning, I thought I'd do some
5 introductions, there's several people I wanted to
6 introduce. At the far end is Sharon Graber, she's the
7 acting vice-president of insurance strategy, product
8 and pricing. Next to Ms. Graber is Bill Carpenter,
9 the chief financial officer and chief actuary. Kelly
10 Amers is sitting behind me. She is the director,
11 pricing and regulatory affairs. And June Elder, who I
12 believe you know, is manager of regulatory affairs.

13 And we have no issues to add to the list.
14 Thank you.

15 THE CHAIRPERSON: Thank you.

16 MR. MILLER: The next is the British Columbia Old Age
17 Pensioners' Organization *et al.*

18 MS. WORTH: Good morning, Mr. Chair, members of the
19 panel. Leigha Worth, W-O-R-T-H, here as counsel for
20 BCOAPO *et al.*, along with my co-counsel, Kate Feeney,
21 F-E-E-N-E-Y. And we have no issues to add to the
22 agenda today. Thank you.

23 THE CHAIRPERSON: Thank you.

24 MR. MILLER: MoveUP.

25 MR. QUAIL: Good morning. Jim Quail appearing for
26 MoveUP, which is of course the union that represents

1 ICBC's unionized employees, and we don't have any
2 issues to add to the agenda either. So, good news so
3 far.

4 THE CHAIRPERSON: Thank you.

5 MR. MILLER: Toward Responsible Educated Attentive
6 Driving.

7 MR. WEISBERG: Good morning, Mr. Chair and Commissioners.
8 My name is Fred Weisberg, W-E-I-S-B-E-R-G. I am here
9 representing as counsel Toward Responsible Educated
10 Attentive Driving, or TREAD as we're more commonly
11 known in these proceedings. With me today is TREAD's
12 consultant, Mr. Tony Roberts.

13 We have no items to add to the agenda, but
14 we will be speaking to agenda item 3, the other
15 issues. So, I'll leave it at that, unless you have a
16 question. Thank you.

17 THE CHAIRPERSON: Thank you, Mr. Weisberg.

18 MR. MILLER: Mr. Landale.

19 MR. LANDALE: Good morning, Mr. Chairman and panel. My
20 name is Richard Landale. I'm a senior, representing
21 myself, and I have nothing extra to add to the agenda.
22 Thank you.

23 MR. MILLER: That concludes the order of the appearances,
24 Mr. Chair.

25 THE CHAIRPERSON: In that case, we should proceed to have
26 ICBC start us off. Mr. Ghikas.

1 **Proceeding Time: 9:06 a.m. T2**

2 **SUBMISSIONS BY MR. GHIKAS:**

3 MR. GHIKAS: Thank you, Mr. Chairman. Let me start off
4 by saying, and something that ICBC has stated in the
5 past, and that is that it favours an efficient and
6 proportional process. And one that is focused on the
7 material issues that are within scope of the revenue
8 requirements process within the Commission's
9 jurisdiction, and within ICBC's control.

10 In the current context, in my submission,
11 that speaks to having a process that is written and
12 based on one round of IRs. And further to a draft
13 timetable, option A.

14 Mr. Chairman, this proposal, in my
15 submission, is supported by two broad considerations.
16 The first being that the current legislative rate
17 smoothing framework drives a particular rate outcome
18 this year. And the second is that it is even the
19 rationale for a written process along the proposed
20 lines is even stronger this year, given the imminent
21 changes to the insurance regime that have been widely
22 publicized in the media. I'll expand on each of those
23 points.

24 With respect to the legislative rate
25 smoothing framework, Mr. Chairman, even more than in
26 past years, it should be a consideration driving the

1 process that we use in these proceedings, because in
2 the current circumstances, that rate smoothing
3 framework drives a particular -- a specific rate
4 outcome, and that is a rate increase of 6.4 percent.
5 And I say that, because the Commission's operating
6 under a legislative rate change band that is
7 established by section 3(1.1) of Special Direction
8 IC2. And that dictates that the rate this year,
9 approved by the Commission, cannot deviate by more
10 than 1.5 percentage points of the rate change number
11 that was approved last year. So, last year the
12 Commission approved a 4.9 percent rate increase. This
13 year the band is 6.4 percent at the top, and 3.4
14 percent at the bottom.

15 Special Direction IC2 also determines the
16 capital provisions in the rate indication, which takes
17 off the table one of the issues that is typically
18 discussed in these proceedings.

19 The third element of the legislative
20 framework that bears noting is that the legislation
21 establishes basic insurance as a closed system. And
22 what I mean by that is ICBC, unlike a utility, does
23 not have a profit provision in the formal sense, a
24 return on equity that happens that is included in the
25 rate for basic insurance, unlike a utility. And that
26 variances, forecast variances do not flow to the

1 account of a shareholder. So, any forecast variances
2 go back into basic insurance, and that differentiates
3 this from a regular utility. I'll come back to that
4 point later.

5 But more so than in past years, this
6 framework really does effectively determine the rate
7 this year. And I say that because the actuarial
8 analysis, which is conducted by actuaries that are
9 operating consistently with their professional
10 standards of practice, indicates that the rate change
11 that would be required to cover the costs is 20
12 percent. And that's 13.6 percentage points higher
13 than the upper band of the legislative Special
14 Direction. And for a reference, that is the
15 application Figure 2.3 on page 2-6.

16 And so, as a result of that basic capital
17 will absorb the 13.6 percentage point rate deficit,
18 and that in dollar terms is equivalent to \$415
19 million, over the course of policy year 2017.

20 And ICBC's evidence to date is that there
21 are no changes that could be made by ICBC within the
22 current framework that would offset that differential
23 so as to allow the rates to be anything other --
24 anything less than the cap of 6.4 percent. It's not
25 just the amount, it's the timing as well that is
26 driving that outcome.

1 to take you to. The first one is the November 7th,
2 excerpts from the Hansard of the estimates debates.
3 And this would be, if we could have that marked as
4 Exhibit B-3?

5 THE HEARING OFFICER: Marked Exhibit B-3.

6 (OFFICIAL REPORT OF DEBATE (HANSARD), NOVEMBER 7th,
7 MARKED EXHIBIT B-3)

8 MR. GHIKAS: There is more on the subject, I want to make
9 sure I am clear about that. There is more on the
10 subject of ICBC that's along similar vein. I've just
11 excerpted a couple of pages here to give a flavor of
12 what the discussion has been in the legislative
13 debates, and I'd start, direct you to the first of the
14 pages in the excerpt, which is page 1890 over on the
15 right-hand column, under the time that says 4:05 P.M.?
16 And you will see Minister Eby talking. He indicates
17 -- references first of all, in responding to a
18 question, the no-fault model saying, it's not a
19 direction we're going. We're not implementing no
20 fault in British Columbia, and I can advise the member
21 that that remains the case. And then he goes on to
22 discuss the consultation that's ongoing, and the
23 expectation of action in the near term. He says,
24 "With that said, legal expenses are driving
25 a huge amount of the rate increases that
26 we're seeing, and we're having difficult but

1 important conversations with groups like the
2 Trial Lawyers Association of British
3 Columbia, and others involved in the legal
4 system, medical experts, and so on, to make
5 sure that we're driving down those legal
6 costs. I'm very hopeful that we will be
7 able to make some announcements to that end
8 very soon, because we have to. We have to
9 get ICBC's finances under control."

10 And Minister Eby goes on to say,

11 "Short of a no-fault system, I can certainly
12 advise the member that we are willing to
13 look at really any well thought out
14 recommendation for how we can get costs
15 down. The member's aware of the report that
16 was commissioned by the previous government,
17 Ernst & Young report, as it is known, does
18 recommend caps on certain types of minor
19 injuries, soft-tissue injuries, pain and
20 suffering awards. I've been very clear in
21 the media, and I will be clear with the
22 member here, that we are looking at options
23 like that.

24 I can also advise the member that it is
25 not the extent of what we're looking at.
26 We're looking at the escalating rate of

1 material damage claims, the autobody repair
2 costs that ICBC is facing..."

3 And he goes on over to the next page citing other
4 examples of steps that are being looked at.

5 And over on the following page, second full
6 paragraph,

7 "There are all kinds of opportunities for us
8 in partnership with ICBC, to drive costs
9 down."

10 And then goes on after discussing consultation later
11 in the next paragraph to say,

12 "The system as it stands is not sustainable
13 for British Columbians. They cannot
14 continue to subsidize the system as it
15 stands, through their auto insurance rates,
16 because we are not going to increase rates
17 the 20 percent, or 30 percent that would be
18 required to maintain the existing system.
19 Some changes will have to be made, and we
20 will make those changes."

21 So, you have an unequivocal statement, Mr.
22 Chairman, from the Minister, that changes, and big
23 changes are coming.

24 The second document that I wanted to refer
25 you to is a press release from the Government of
26 British Columbia, and it is titled, "Government

1 forecast variances don't flow to a shareholder. They
2 go back into the system. And so what you essentially
3 have is a model that's eliminating the forecast risk
4 in the current circumstances, and that's a key
5 consideration in terms of -- that to suggest that the
6 Commission can proceed based on the current
7 legislative framework with the information before it,
8 and not be concerned about the forecast variances that
9 will potentially result from future changes to the
10 overall framework of the Insurance Corporation.

11 The second aspect of this point is that
12 ICBC's ability to speak to the initiatives that are
13 coming at the current time is limited. And you will
14 have seen from the *Hansard* that government is driving
15 these changes. And ICBC in its role as a Crown
16 corporation is supporting government, but the changes
17 under consideration are changes that only government
18 can make.

19 And product changes require legislative
20 changes, caps on recovery require legislative changes,
21 and changes to elements of the rating system require
22 legislative changes.

23 And ICBC's involvement in supporting
24 government is subject to Cabinet privilege, and that's
25 -- it's, as you're aware, Cabinet privilege is a legal
26 privilege that only government has the right to waive.

1 And the privilege is a hallmark of the system, the
2 Parliamentary system that we have that allows Cabinet
3 freedom to explore initiatives.

4 It does mean in the current context that if
5 ICBC is aware of specific initiatives, it's not able
6 to speak to those initiatives. That that is
7 government's prerogative to do that, and they are
8 carrying out their own investigations at this time.
9 And you'll see those dynamics playing out in some of
10 the responses to IRs, particularly those from TREAD,
11 which are asking about how ICBC is implementing the
12 Ernst & Young report, and what steps are being taken
13 in that regard.

14 And ICBC has answered those questions, for
15 example, the series -- the TREAD 78 series. ICBC's
16 answered those in the only way it can at this point,
17 which is by pointing out that the changes are within
18 the purview of government, and that it's not at
19 liberty to discuss them at this point in any event.

20 The current circumstances mean that follow-
21 up IRs can only elicit the same type of response on
22 those issues, and ICBC understands that that may be
23 frustrating to some of the participants, and even to
24 the Commission, in the current process. But that is
25 the nature of the position that we stand in. There
26 are big changes coming. The consultations are being

1 undertaken by government, and government has indicated
2 that it is making those changes.

3 So, the remainder of the focus of this
4 proceeding should be on the matters over which ICBC
5 can influence control within the existing legislative
6 framework.

7 **Proceeding Time: 9:22 a.m. T6**

8 And in my submission, that speaks to, as I
9 indicated, the one round of IRs being sufficient, and
10 with respect to the straw, the straw dog time table
11 that was attached to the Commission's letter at
12 Exhibit A-8, it would favour option A. But,
13 obviously, if the Commission disagrees and seeks
14 additional process, from the perspective of the
15 timelines that are set out there, all of those
16 timelines would work with ICBC.

17 So, that would conclude my comments at this
18 point. If I need to address anything in reply I will,
19 subject to any questions from the panel.

20 COMMISSIONER REVEL: ICBC has already answered one round
21 of IRs. Are you suggesting that is a period at the
22 end of the interrogatory process at this point? Or is
23 there another round coming forward?

24 MR. GHIKAS: No, my submission would be that the existing
25 IRs should stand as the evidence in the proceeding,
26 and that we proceed to submissions consistent with the

1 timeframe in option A.

2 COMMISSIONER REVEL: Thank you.

3 THE CHAIRPERSON: Thank you, Mr. Ghikas.

4 MR. GHIKAS: Thank you.

5 **SUBMISSIONS BY MS. WORTH:**

6 MS. WORTH: Mr. Chair, members of the panel. I think
7 it's fair to say that BCOAPO's coalition groups and
8 their members, B.C.'s low and fixed income ICBC policy
9 holders are all gravely concerned by the actuarial
10 indication that we saw in this year's revenue
11 requirement. 20 percent.

12 The insurer would need 20 percent more from
13 each and every policy holder to break even from an
14 actuarial perspective for policy year 2017. That's
15 staggering. That is 13.6 percent more than they've
16 applied for, and \$415 million than they've applied
17 for.

18 The fact that the maximum rate is
19 predetermined, or that the government is engaging in a
20 review of ICBC does not mean that we can abdicate our
21 responsibilities as intervenors to our clients to the
22 members of those clients, and that you as an expert
23 tribunal should consider doing so to undertake a
24 process that is not proportionate, to address the
25 issues that actually underlie these rate increases
26 that would otherwise be taking place, absent the

1 transfer from one part of ICBC to another.

2 These are gross and unsustainable
3 increases. What are they? What caused them? What
4 can be done from the perspective of our processes?
5 Within the jurisdiction of this tribunal and the
6 subject matter of a revenue requirement? We have not,
7 in my mind, been able to dig down deep enough in one
8 round of IRs, in order to actually address those
9 issues.

10 We are concerned, as we have been for
11 years, about the representation rate skyrocketing.
12 And the insurers apparented [*sic*] inability to
13 mitigate claims. The material damage increases we've
14 seen are also a concern. We've got premium increases
15 and other cost pressures as well, and then projects
16 that have been undertaken in recent years with dubious
17 results and high costs.

18 So, in light of all of these issues, and
19 the fact that not all of the IRs are subject to the
20 type of privilege that my friend has asserted, I'm
21 going to ask that the Commission panel order a second
22 round of IRs. There are a number of IRs that just we
23 asked, that I think have natural follow-ups, let alone
24 natural follow-ups on the IRs asked by other parties
25 here, including the Commission staff.

26 There is a strong need for what I think is

1 So I guess if we were looking at the straw
2 dog schedule that the Commission has provided in its
3 letter regarding today, we would say Option B or C,
4 but with the caveat that we don't support an SRP.
5 Rather, it would be a limited oral hearing.

6 Subject to any questions, those are our
7 submissions.

8 THE CHAIRPERSON: Thank you, Ms. Worth.

9 MS. WORTH: Thank you.

10 **SUBMISSIONS BY MR. QUAIL:**

11 MR. QUAIL: People may be surprised to hear my client
12 being somewhat aligned with ICBC this time around,
13 when it comes at least to process. Maybe not too much
14 beyond that; we shall see.

15 We agree that the Corporation is facing
16 very serious difficulties and of course that's a very
17 grave matter for its workforce. And over the past
18 years, the only real response to rising pressures on
19 settling claims coming from the government was
20 disguising the impact of these pressures by
21 suppressing premium increases, continuing to offload
22 government programs and costs onto the Corporation and
23 bleeding off capital.

24 And it's clear that the main arena that
25 we'll be addressing, this gathering crisis, will be
26 centred in Victoria, not with this Commission. That

1 is, issues as my friend Mr. Ghikas canvassed, having
2 to do with the product. But I would add the
3 regulatory and financial regime of the Corporation.
4 And the fundamental questions will need to be
5 addressed there.

6 However, the Commission does have a
7 significant role to play, including assisting in that
8 process by creating a record and providing an
9 analysis, which should be foundational for the work
10 that has to be done to put the Corporation back on its
11 feet.

12 In terms of the process, we are not looking
13 for a second round of Information Requests. I want to
14 make it clear, my client is not opposed to one, but we
15 are -- actually find ourselves surprised with our --
16 the degree of thoroughness and responsiveness to our
17 first round of IRs, so we're not seeking follow-ups on
18 the issues that we are dealing with and particularly
19 focusing on. And those issues of principle concern
20 would include issues for example of customer service.
21 And I should point out, this Commission does have an
22 enhanced statutory role in terms of the calibre of
23 service to the public, and to policyholders, that ICBC
24 delivers compared with energy utilities regulated by
25 the Commission. Under the *Insurance Corporation Act*
26 there are important enhanced powers of oversight and

1 COMMISSIONER REVEL: But you are not adverse to a second
2 round, is that what I hear correctly?

3 MR. QUAIL: No. We don't believe that we -- if there is
4 a second round we'll probably have a few questions,
5 but we are not here seeking an opportunity to pursue a
6 second round, in terms of the issues we're addressing.
7 I want to say again that we are very pleased with the
8 thoroughness of the responses that ICBC gave us, in
9 particular to the material damage claims cost issue
10 that we were pursuing a lot of our information
11 requests.

12 COMMISSIONER REVEL: Thank you very much, I just wanted
13 to clarify that point.

14 MR. QUAIL: Yes, and thank you for the opportunity to be
15 clear.

16 THE CHAIRPERSON: Mr. Quail, I also assume that MoveUP
17 would not be providing intervenor evidence in this
18 case?

19 MR. QUAIL: I'm sorry, I meant to address. No, we are
20 not seeking to address.

21 THE CHAIRPERSON: Okay, just to clarify that, thank you.

22 **SUBMISSIONS BY MR. WEISBERG:**

23 MR. WEISBERG: Mr. Chair and Commissioners, TREAD submits
24 that the most appropriate process option for this
25 proceeding would be an oral hearing with two rounds of
26 information requests.

1 Just addressing a couple points that have
2 just been brought up regarding information requests
3 and whether a second round is required or not, my
4 friend Mr. Ghikas properly, I think, brought up the
5 question of Cabinet privilege. We acknowledge that's
6 significant, and that it may apply to some IRs. He
7 didn't give you a list or an extensive list of which
8 IRs that applies to, but it certainly is not the
9 majority, in our opinion, and it's certainly not all
10 of them.

11 For follow-on IRs, it is difficult for --
12 or maybe impossible for intervenors to determine in
13 advance which responses may attract Cabinet privilege.
14 The best way, in my submission, to deal with that is I
15 believe what Ms. Worth has already suggested, that
16 those IRs be allowed to be delivered to ICBC, and if
17 Cabinet privilege properly applies, then that's
18 certainly ICBC's right, and we expect that they would
19 exert that privilege in framing their response. That
20 is a simple way to deal with it.

21 What it does, though, is avoid sort of a
22 self-editing of intervenor IRs, that may very well not
23 attract any Cabinet privilege, but a chill effect, if
24 you will, of not asking questions, or perhaps would be
25 helpful to ask, and might not attract that
26 consideration whatsoever.

1 I think Mr. Quail's comments included a
2 mention that the role for the Commission in this
3 proceeding in his view includes creating a record, and
4 providing helpful analysis that both of which can
5 inform the discussions between ICBC and government, or
6 within ICBC or within government, that will follow.

7 **Proceeding Time 9:36 a.m. T9**

8 And I think that's a golden opportunity for
9 the Commission here to provide value through its
10 public hearing process. And part of creating that
11 record, certainly, and providing a basis for more
12 helpful analysis, either now in this process or in the
13 future in those discussions, a second round of IRS
14 certainly has the potential to help in both respects.
15 So in no way a guarantee, of course. But it's more
16 likely to help than to hurt.

17 In TREAD's submission, a written hearing is
18 not appropriate for this revenue requirement
19 application. The main reason for stating that is the
20 magnitude of the issues before this panel, before
21 ICBC, before government. And we collectively, I
22 think, need to all do our part to pursue and identify
23 -- to identify and pursue the best options available.

24 Ms. Worth noted in her remarks that the
25 status quo is gross and unsustainable rate increases.
26 ICBC doesn't disagree, I don't think, with that

1 characterization. Ms. Worth noted then that that
2 being the case, it's important to look at what are the
3 drivers behind those increases. What can be done
4 about them? How can they be addressed?

5 And to suggest that there isn't something
6 valuable in terms of those answers that can come out
7 of this proceeding, I think does a disservice to the
8 Commission and to the process that it holds.

9 I will comment further in terms of why not
10 a written hearing in my remarks about why an oral
11 hearing is appropriate. But first let me comment on a
12 streamlined review process, or SRP.

13 TREAD submits that if it was a choice
14 between that and a written-only proceeding, then a
15 streamlined review process would be the better option
16 of the two. And I'll make an important qualification
17 on that. The process options and timetable straw dogs
18 that were put forward by Commission staff list an SRP
19 under Option 3, which includes a written argument
20 phase, if I may call it that, of ICBC intervener final
21 argument, followed by ICBC reply. And in the event
22 that the Commission chooses to proceed with an SRP, we
23 would understand and request that a written argument
24 phase would be part of that process. I think that's
25 suggested in the process options you have.

26 The added value, though, then, of an SRP

1 would be that it would provide some opportunity for
2 real-time -- I hesitate to say "dialogue" but I
3 suppose in an SRP context it would be dialogue. A
4 question put to ICBC, an answer given, and a chance in
5 real time to follow up. Because these are complex, as
6 you well know, very complex issues we're dealing with.
7 And to anticipate in advance ICBC's answer and try to
8 follow all the possible paths that that may lead, in a
9 written process is simply impossible.

10 **Proceeding Time: 9:40 a.m. T10**

11 The number and range of complex issues, the enormous
12 disparity between the views of ICBC and at least some
13 intervenors regarding how best to address those
14 issues, and the amount of time necessary to fairly
15 cover those issues, we think makes an RRA ill-suited
16 for the abbreviated consideration possible in an SRP.
17 But as I noted, it would still be preferable to a
18 written proceeding only.

19 We believe that an oral hearing is
20 required, and should be ordered for the following
21 reasons. A) that the issues identified and discussed
22 in the independent review report require deep
23 consideration, urgent action, and significant changes
24 to the status quo. And we believe that pursuing those
25 objectives can best be done with an oral hearing
26 component that includes cross-examination.

1 B) ICBC's attempt to exclude any
2 consideration of the independent review report before
3 intervenors were involved in the process, suggests a
4 deliberate attempt to stifle discussion, to avoid
5 scrutiny to frustrate any requirements or directions
6 to act, and to delay implementation of much needed
7 changes and solutions.

8 C) the past three RRAs, for the 2014, '15
9 and '16 policy years, have been written proceedings
10 that allowed ICBC to avoid any real-time questions, no
11 opportunity for follow-up in that context, and no
12 face-to-face accountability.

13 D) Although the maximum and minimum rate
14 increases are prescribed by the statutory framework,
15 ICBC's customers and intervenors deserve an
16 opportunity to require ICBC management to answer
17 directly for the errors to the problems highlighted in
18 the independent review report. I acknowledge that
19 some of those errors and problems certainly are
20 partially or completely outside of ICBC's direct
21 control. That doesn't mean that they shouldn't be
22 identified and discussed in a public forum.

23 E) An oral hearing, we submit, is the best
24 available process option to encourage fulsome and open
25 discussion of the huge challenges facing ICBC; to
26 scrutinize the reasons why those problems have

1 developed; to assist the Commission in determining
2 appropriate, specific directions to ICBC; and to
3 facilitate timely implementation of much needed
4 changes and solutions.

5 TREAD generally supports process option C,
6 subject to certain modifications that I will address
7 in turn.

8 A note regarding the regulatory timetable.
9 TREAD submits that the commission staff proposals have
10 omitted a key date, and that date is the date that
11 this panel issues its order resulting from this
12 procedural conference. That date is key, because
13 until intervenors have a chance to review and consider
14 the panel's order regarding elements such as a second
15 round of IRs, a written hearing versus an SRP versus
16 an oral hearing, it is impossible for Commission staff
17 to provide a reliable estimate of hearing days, or for
18 intervenors to prepare a reasonably informed PACA
19 budget. TREAD submits that a minimum of 10 workings
20 days, exclusive of holidays and weekends, should
21 follow the issuance of the commission's order before
22 PACA budgets are due. Depending on when the
23 Commission issues the order, the remaining process
24 steps may have to be pushed back, but it would see
25 that should not be necessary.

26 Track 11

Proceeding Time 9:45 a.m. T11

1
2 Given the volume of responses to IRs in
3 round 1, and the intervening Christmas period, the
4 deadline of January 4th for intervener second-round
5 IRs, if there is one, seems unnecessarily aggressive.
6 TREAD submits that January 11th would be a more
7 appropriate deadline for that step, and if that change
8 is made we would suggest that each of the remaining
9 steps be pushed back by one week.

10 Under process Option C, there is an
11 asterisk beside "ICBC final argument" date, and the
12 asterisk leads to an explanation that's taking into
13 consideration March 19th to April 2nd, 2018, spring
14 break/Easter holidays. That 13-day period, however --
15 or the 13-day period provided in Option B in terms of
16 deadlines between ICBC final written argument and
17 intervener written argument falls almost entirely
18 within that same holiday period. We would submit that
19 that creates a significant disadvantage for
20 interveners under process Option B, and TREAD would
21 invite the Commission staff, through counsel, to
22 explain the reasoning for that disparity in the
23 process options.

24 That takes me to the agenda item 2. Sorry.
25 One moment, Mr. Chair.

26 Proposed intervener, if any -- intervener

1 evidence, if any. TREAD does not anticipate filing
2 intervener evidence in this proceeding.

3 Agenda item 3 is other matters that will
4 assist in the efficient and effective review of the
5 application. The first matter is that TREAD requests
6 the panel to explain the apparent inconsistency
7 between the panel ruling that the independent review
8 report is in scope, that's in Exhibit A-3, and the
9 complete absence of any questions related to the
10 independent review report among the Commission's 42
11 pages of Information Requests to ICBC. It's
12 remarkable, and for TREAD, at least, very difficult to
13 understand that the Commission would have not even one
14 question in an Information Request that includes over
15 a hundred questions, that explored any aspect of the
16 independent review report. The panel itself
17 determined that the report was relevant and expressly
18 in scope for this proceeding.

19 TREAD urges the panel to address the
20 reasons for that disconnect. Interveners and the
21 public need to know if the panel directed staff to
22 avoid asking any questions related to the independent
23 review report, and if so, why. In the absence of the
24 panel's express confirmation that it did not provide
25 such direction to staff, that possibility may give
26 rise to a reasonable apprehension of bias.

1 noteworthy document, and one that it should be noted
2 was commissioned by ICBC's board on direction from the
3 provincial government, it may undermine public
4 confidence in the Commission's processes and perhaps
5 even in impartiality.

6 Number 2. TREAD requests an explanation of
7 why key documents have been recognized and relied on
8 by the panel for purposes of its scoping decision,
9 Exhibit A-3, but have not been entered into the record
10 by the Commission or by ICBC.

11 The first one of those documents is, of
12 course, the Independent Review Report. After the
13 panel expressly found that the Independent Review
14 Report was relevant and in scope, a number of
15 questions arise as follows.

16 A) Why was the Independent Review Report
17 not included as an attachment to Order G-156-17.

18 B) Why was the Independent Review Report
19 not filed as an exhibit by Commission or Commission
20 staff, as they have done with other documents in the
21 past, or requested by the Commission in an information
22 request.

23 C) Why was the Independent Review Report
24 not filed as an exhibit by ICBC by its own initiative,
25 on direction from the Commission or in response to
26 TREAD IR 81.1 or MoveUP IR 6.1. Note that despite

1 TREAD requesting ICBC to file the Independent Review
2 Report, ICBC simply provided an electronic link to
3 that document on its website. ICBC and its counsel
4 know very well that the Independent Review Report --
5 sorry, know very well that the long-established
6 practice before the Commission is to file evidence
7 with the Commission so that it becomes a formal part
8 of the record of the proceeding. ICBC's refusal to do
9 so, we submit, is improper and inefficient and appears
10 to be in a deliberate attempt to make access to the
11 report more difficult.

12 ICBC's approach, just to illustrate that
13 point, requires interveners or members of the public
14 that are looking at the Commission website to first
15 find ICBC's responses to TREAD or MoveUP, and those
16 are within a document that is hundreds of pages. To
17 then happen upon the reference to the electronic link
18 and then go to ICBC's website to obtain it. Parties
19 wishing to reference the Independent Review Report in
20 letters of comment might not ever be aware of its
21 existence, which presumably is ICBC's intent.

22 D) Why did the Commission and ICBC both
23 choose the least efficient, the most process
24 intensive, and the longest delayed means to put the
25 203 page Ernst & Young report titled "ICBC Affordable
26 and Effective Auto Insurance – A New Road Forward for

1 British Columbia", on the record in this proceeding.

2 **Proceeding Time: 9:54 a.m. T13**

3 Why did intervenors have to search for that
4 document themselves, actively seek to have it filed on
5 the record, and now seek to have the Commission
6 correct the approach after ICBC refused to file it as
7 requested?

8 Move now to the second heading of documents
9 that have been recognized and relied on by the panel
10 but have not been filed, and those are the ICBC
11 letters regarding rate design. The reasons for
12 decision appended to order G-156-17 stated that,

13 "The panel agrees with the arguments put
14 forth by ICBC and accepts ICBC's request to
15 exclude rate design matters from the scope
16 of this proceeding."

17 In support of that determination, the
18 background section 1.0 stated,

19 "In its 2013 revenue requirements
20 application decision, the Commission
21 requested ICBC provide an update of its
22 plans around a rate design application by no
23 later than December 31st, 2015. In its
24 December 2015 and June 2016 letters to the
25 Commission, ICBC submitted that resources
26 systems and other considerations effect the

1 timing of rate design plans. ICBC was
2 continuing to work with government, and was
3 exploring the potential for filing aspects
4 of rate design in late 2016 and/or 2017."

5 Having expressly relied upon ICBC's
6 December 2015 and June 2016 letters to the Commission
7 in its order G-156-17 reasons for decision, to arrive
8 at its determination a rate design is out of scope,
9 intervenors and the public should have easy and direct
10 access to those letters. TREAD requests that the
11 Commission enter both letters as exhibits in this
12 proceeding, as well as advising whether both letters
13 are previously been publically available, and if so,
14 by what means?

15 Immediate production of both letters is
16 even more critical in light of ICBC requesting
17 exclusion of rate design, and the Commission accepting
18 that request with no opportunity provided to
19 intervenors to provide any input or clarification to
20 that question.

21 Moving to the next item, that being to
22 clarify the intended application of the panel's
23 scoping decision regarding rate design per order G-
24 157-17. TREAD submits that the relatively unqualified
25 exclusion of rate design matters in the scoping
26 decision is resulting in inefficient and ineffective

1 process. TREAD requests that the panel clarify that
2 information requests or submissions that are relevant
3 to in-scope issues, are not out of scope simply
4 because they may necessarily also have some connection
5 to rate design. Some of ICBC's responses to
6 information requests purport to use the Commission's
7 approval of its requested exclusion of rate design as
8 an impenetrable shield to render out of scope any
9 questions that it dislikes, regardless of whether they
10 explore legitimate issues related to the revenue
11 requirements.

12 The 2013 ICBC revenue requirements
13 application proceeding provided a clear example that a
14 particular issue can give rise to both rate design and
15 revenue requirement issues. So the bare fact that an
16 issue has some rate design implications does not
17 necessarily mean that it should be out of scope in an
18 RRA proceeding.

19 Regarding fines and demerit points as a
20 specific example, Mr. Ghikas, at transcript 6 of the
21 2014 oral hearing at page 188, drew a distinction
22 between possible changes to fines and demerit points,
23 and on the other hand, their revenue impacts. He said
24 then that the former would be rate design, and
25 therefore out of scope, but the latter would be
26 concerned with revenue and would therefore be in

1 scope.

2 **Proceeding Time 9:59 a.m. T14**

3 So I cite that just as a specific example
4 of where you take an issue and it certainly may have a
5 direct line to rate design implications. That does
6 not mean, necessarily, that it doesn't also have a
7 direct connection to revenue requirements. And in
8 that case, where it has both, we submit that those
9 questions must be allowed, and answered, if they're
10 Information Requests, and answered if it's on cross-
11 examination. It's a very simple principle.

12 TREAD is also deeply concerned by the
13 panel's issuance of an Order that gives ICBC open-
14 ended discretion to file a rate design application if
15 and when it chooses. And to put that in context, I'll
16 quote the end of that scoping decision. It said,

17 "The panel notes ICBC has submitted it will
18 be filing a rate design application in the
19 future, and looks forward to addressing rate
20 design matters at that time."

21 So, here are TREAD's concerns about that
22 *laissez-faire* approach. (a), it appears contrary to
23 accepted actuarial practice regarding the frequency or
24 interval of rate design applications. It's now been
25 ten years since ICBC's last and only rate design
26 application and although ICBC acknowledges that its

1 cost drivers have changed significantly, in some cases
2 dramatically over that period, ICBC refuses to reflect
3 those significant changes in an updated rate design
4 consistent with accepted actuarial practice.

5 And there can be no doubt, no doubt
6 whatsoever, that accepted actuarial practice is an
7 issue in this RRA. It's a justification that ICBC
8 relies on regularly. It's legitimate concerns that
9 they raise, certainly. But it has its limits.

10 (b), this *laissez-faire* approach is also
11 inconsistent with ICBC's sworn testimony in the 2013
12 RRA proceeding regarding its reasons for not
13 completing a rate design application after conducting
14 a customer consultation and engagement process in
15 2012. The competing priorities identified by ICBC,
16 such as the transformation program, have been
17 completed, and the details are discussed in the
18 Commission's May 14th, 2014 decision at pages 50 and
19 51.

20 I'm going to need to quote that. So in
21 Section 7.1, rate design, the decision stated:

22 "At the oral hearing, Ms. Prior explained
23 why rate design was put on hold and why it
24 makes more sense to undertake rate design
25 after 2015. ICBC submits that the priority
26 is to move ahead with its new system and it

1 wouldn't be in a position until post-2015 to
2 file a rate design application as the new
3 system is expected to be completed around
4 the end of 2015."

5 7.1.1, the Commission panel determination.
6 "During the oral hearing, several
7 interveners raised the issues that normally
8 fall under the subject matter of rate
9 design. Although not a part of this
10 hearing, the panel is aware a possible rate
11 design application may be warranted in the
12 near future. The panel requests ICBC to
13 provide an update of its plans around a rate
14 design application as part of its 2015
15 revenue requirements application, or by way
16 of a separate filing no later than December
17 31st, 2015."

18 Interveners and the public are entitled to
19 an explanation of why the panel that issued the ICBC
20 2013 RRA decision on May 14th, 2014, felt that a rate
21 design application may be warranted in the near
22 future. That's a quote. Yet more than three and a
23 half years later, this panel appears indifferent to
24 the need for a rate design application. The rationale
25 for delay provided by Ms. Prior's testimony has lapsed
26 and it no longer applies.

1 (c) The *laissez-faire* approach is
2 inconsistent with the express recommendation of the
3 independent review report, which I point out again,
4 was commissioned by ICBC's own board at the direction
5 of the provincial government and has been expressly
6 been found to be in scope in this proceeding.

7 **Proceeding Time: 10:04 a.m. T15**

8 d) The *laissez-faire* approach is
9 inconsistent with the expected timeline noted in the
10 Commission's scoping decision, Exhibit A-3. The most
11 recent ICBC letter to the Commission regarding rate
12 design was apparently in June 2016, one and a half
13 years ago.

14 "The Commission also notes that ICBC was
15 continuing to work with government and was exploring
16 the potential for filing aspects of rate design in
17 late 2016 and/or 2017." And I emphasize the word
18 there "filing," not "developing."

19 It should be obvious that late 2016 is now
20 a full year ago and there is just 26 days remaining in
21 2017. That means that the most recent timeline
22 provided by ICBC for actually filing some aspect of
23 rate design has now expired without consequences and
24 without meaningful direction from the Commission.

25 So here's why this matters in this context,
26 and I take you back to why we're here today, to talk

1 about in part other matters that will assist in the
2 efficient and effective review of the application.
3 What confidence can interveners and the public have in
4 an efficient and effective review of the application
5 when the Commission and ICBC's handling of rate design
6 has been neither efficient, nor effective, nor timely.

7 TREAD requests that the panel and
8 Commission staff request the -- or provide the
9 requested explanations today at the procedural
10 conference if possible. If not, then we request that
11 it be included in the Commission's order resulting
12 from today's proceeding.

13 In the absence of such explanation, that
14 silence would frustrate interveners and public
15 understanding and acceptance of the process and
16 undermine procedural efficiency by creating an
17 expectation that the Commission will not ask relevant
18 questions about major issues and documents,
19 specifically the Independent Review Report. If that
20 responsibility of the Commission is to be shifted to
21 intervenors, then a reasonable explanation should be
22 provided.

23 In late breaking developments, I happened
24 to look yesterday online and I found an article that
25 -- my apologies, but I have just two copies of. We'll
26 provide a copy to the Hearing Officer to enter as an

1 exhibit if that's acceptable to the panel. It's a
2 Vancouver Sun article titled "Worst Drivers on ICBC's
3 Rader to Lose Safe Driving Discount." It was
4 published yes- -- I'm sorry, it was published on March
5 4th, 2017.

6 And in it it includes this quote,
7 "We believe that drivers who cause crashes
8 should pay more than those who don't."

9 Now in fairness, that sounds exactly like
10 something TREAD or someone speaking for TREAD would
11 say and we have said that in almost those very words.
12 But in this case, it was said by ICBC board chair
13 Barry Penner. And that, I point out, sounds a whole
14 lot like rate design. In fact, it sounds exactly like
15 rate design.

16 The article goes on to say,
17 "ICBC announced drivers who cause multiple
18 at-fault crashes will lose their safe
19 driving discounts faster..."

20 Then there's an electronic link provided,

21 "...faster than they do now, with the changes
22 expected to take effect on May 6th, 2018."

23 **Proceeding Time 10:09 a.m. T16**

24 The May 6, 2019 date, of course, is clearly within
25 scope of policy year 2017. And again, announcing
26 that drivers who cause multiple at-fault crashes will

1 lose their safe driving discounts faster sounds
2 exactly like an element of rate design.

3 I raise that article and the quotes within
4 it to provide further context around our concern that
5 it's inefficient to suggest that there is a complete
6 prohibition on considering anything related to rate
7 design in this proceeding, when it clearly can have,
8 and will have revenue impacts as well. So it fits
9 well within the revenue requirements application
10 realm, if you will, of relevance.

11 Subject to any questions, those are my
12 submissions, thank you.

13 Mr. Miller has advised that if that
14 document is accepted as an exhibit, it would be marked
15 as C5-3.

16 THE HEARING OFFICER: Marked Exhibit C5-3.

17 **(VANCOUVER SUN ARTICLE MARKED EXHIBIT C5-3)**

18 COMMISSIONER REVEL: Mr. Weisberg, I have one question
19 related to -- excuse me. I'm getting knotted on my
20 own briefcase here. I have one question related to
21 the early part of your submissions, and it's been
22 rolling around in my head and I found it quite
23 interesting, actually.

24 Did I understand you correctly to say that
25 interveners should not be constrained in the nature
26 and type of interrogatories or IRs that are asked, and

1 that you would be -- you felt that that would provide
2 a good base, shall we say, for the government to
3 examine matters, and that you would be content, as I
4 understood it, if ICBC should be invoked Cabinet
5 privilege? I believe that's what I heard.

6 MR. WEISBERG: I think, generally, Commissioner, that is
7 what I said. Let me try to explain more clearly.

8 COMMISSIONER REVEL: Yes, I was interested in the fact
9 that you felt this was an opportunity, if I may, for
10 the public to get questions out that might be useful
11 to Victoria.

12 MR. WEISBERG: Precisely. And my concern is, I am in no
13 way suggesting that Cabinet privilege, properly
14 applied, is not legitimate and should not be
15 respected.

16 COMMISSIONER REVEL: That's what I thought you said.

17 MR. WEISBERG: I absolutely agree with that.

18 COMMISSIONER REVEL: Thank you, very much.

19 MR. WEISBERG: I don't want to create a situation where
20 interveners feel sort of a chill effect and are afraid
21 to ask an information request because of the mere
22 possibility that it may attract Cabinet privilege.

23 COMMISSIONER REVEL: Just as an observation, I personally
24 can't recall interveners ever being constrained in the
25 questions that they've asked.

26 MR. WEISBERG: No, the constraint I was getting at,

1 Commissioner, was whether or not there will be around
2 two of information requests.

3 COMMISSIONER REVEL: I see.

4 MR. WEISBERG: And Mr. Ghikas' remarks, as I understood
5 them, used the existence, legitimate existence, of
6 Cabinet privilege as one factor to suggest that a
7 second round of IRs isn't appropriate. And my answer
8 to that is no, it is appropriate, so that we can build
9 a helpful record, and to the extent that privilege
10 applies, certainly apply it.

11 **Proceeding Time: 10:13 a.m. T17**

12 COMMISSIONER REVEL: Thank you very much.

13 MR. WEISBERG: Thank you.

14 THE CHAIRPERSON: Thank you, Mr. Weisberg.

15 MR. WEISBERG: Thank you, Mr. Chair.

16 THE CHAIRPERSON: Mr. Landale, before you start, seeing
17 that it is now 10:15 and normally we take a break at
18 10:30, but I would suggest that we take a break now
19 for 15 minutes and then reconvene at 10:30.

20 **(PROCEEDINGS ADJOURNED AT 10:14 A.M.)**

21 **(PROCEEDINGS RESUMED AT 10:31 A.M.) T18/19**

22 THE CHAIRPERSON: Please be seated.

23 Mr. Miller?

24 MR. MILLER: Mr. Chair, I believe the next in the order
25 of submissions is Mr. Landale.

26 THE CHAIRPERSON: Thank you. Mr. Landale, please.

1 **SUBMISSIONS BY MR. LANDALE:**

2 MR. LANDALE: Thank you, Mr. Chairman, panel. Now that
3 we've all wet our whistle, we're ready to continue.

4 I would like to first address the panel
5 regarding the first two exhibits that ICBC gave us
6 today, if that's all right. The first exhibit is the
7 official report of debates by Hansard, and I would
8 like to actually make a general comment to it.
9 Apparently the Honourable Minister, Mr. Eby, wishes to
10 consult with a whole load of people. When one of the
11 most important people they forgot to talk about is
12 seniors, and I would like to bring that to your
13 attention. There is no mention of consultation with
14 seniors who are some 21 percent of all policy holders.
15 And the source of that particular information actually
16 comes from BCUC IR RM, that's Rick McCandless, 4.9.

17 And in that ICBC response to Mr.
18 McCandless, table 1, seniors account for 612,221 out
19 of 2,959,732 personal policy holders. So, what I'm
20 actually saying to the Commission is, given the
21 demographic proportionality, which is again 21
22 percent, seniors should be included in any
23 consultation process. We are the third largest group,
24 according to ICBC. So that's what I have in regard to
25 the Hansard comment, that I'd like the panel to
26 consider.

1 In the second comment, the government
2 undertakes in-depth file review to finding that ICBC,
3 in the middle of that page, and I quote,

4 "ICBC Board and senior management are
5 committed to working alongside government to
6 make sure action is taken quickly as
7 possible to bring about long-term
8 sustainable improvements to ICBC."

9 That's a wonderful, noble thing to say, but
10 again in the entire document, seniors are missed. And
11 that has been, if you recall, Mr. Chairman, I think
12 I've spoken to you now seven times, it's a common
13 theme within ICBC. Seniors are generally ignored in
14 any of the main commentary. If they do get a comment,
15 it's a sideline comment.

16 And I say this genuinely with respect, if
17 the panel was to look around the room, we are the
18 largest demographic in this room. Surely we do have a
19 voice. A voice that should be listened to, and
20 consulted with. And so I am asking the panel to take
21 that into full consideration in their deliberations as
22 to how further proceedings in this matter comes to
23 you.

24 In preparing for this procedural hearing, I
25 looked at various different things within the IRs that
26 had come about. And I'm only going to take a moment

1 to go through. I will be wanting to speak or submit
2 further IRs, IR2, on figure 6.8, basic MCT ratios, and
3 there is a table in page 6-33 that I will be speaking
4 to. So that will be one item I will be speaking to.

5 **Proceeding Time 10:36 a.m. T20**

6 Another item that I have spoken on many
7 occasions, and written many IRs and arguments for, is
8 the weather. That would be another item I would like
9 to follow up as in evidence, as in more IRs.
10 Apparently ICBC hasn't considered weather a
11 particularly important item, but actually within the
12 Information Requests and briefly within the
13 application it is discussed in several places. And I
14 would like to explore more detail and specific
15 Information Requests as it relates to Environment
16 Canada details that ICBC are using for their position.

17 Another item there that -- there's an
18 Information Request in response to the BCUC in the IR,
19 9.1, and I'll be speaking to that in an Information
20 Request number 2. And undoubtedly it will follow up
21 as part of an argument. So I'll be speaking to that
22 particular item.

23 It also continues with Information Requests
24 to the BCU 9.2, and I will be speaking to that to some
25 degree as well. And that also happens to affect
26 Information Request 9.3. And I will be linking, if

1 you allow me to, that Information Request back to
2 2016, BCUC Information Request 7.1, and various other
3 items in 2016. There is also a link to 2015 IRs to RL
4 15. I'll be linking to that.

5 So having said all of that, I am sure you
6 understand I would like to have a second round of IRs.
7 And I try to explain what they are about. I haven't
8 discussed in any great detail, but I will be following
9 up on the minimum capital test criteria, and as moving
10 forward to the overall procedural calendar, what is
11 already put out is generally accepted to me, and I
12 haven't spent a great deal of time in looking at the
13 dates and times and things. I found over the last
14 seven years, the time elements have been fairly
15 reasonable, and this particular time ICBC seems to
16 have taken into account the statutory holidays. So,
17 on the whole, I'm pretty satisfied with that.

18 My closing commentary is actually in
19 support of TREAD. Overall, I think TREAD have
20 enunciated a very large spectrum of comments, but I
21 really do think they are the -- ICBC, if my memory
22 serves me correctly, hasn't actually been held
23 accountable in an oral hearing since 2013/14.

24 In the past, I've advocated for an oral
25 hearing, and that has landed on mute response. ICBC
26 has very little accountability. It appears in every

1 panel's -- Commission panel's --

2 THE CHAIRPERSON: Just a minute, Mr. Landale.

3 Mr. Weisberg, I'd like to be able to hear
4 the speaker, if you don't mind, please.

5 MR. WEISBERG: My apologies.

6 THE CHAIRPERSON: Thank you.

7 Continue, Mr. Landale.

8 MR. LANDALE: I forgot what I was saying. Old-timers,
9 you know. Oh, God. Don't put that in.

10 I'll try to recap. I do think ICBC should
11 be held accountable in an oral hearing. They haven't
12 been held accountable to the panel, to interveners,
13 and the public *et al*, since, as I said, 2013/14.

14

15 **Proceeding Time 10:41 a.m. T21**

16 So I do think TREAD has got a valid point,
17 and I really -- in an oral hearing I would go
18 definitely over the MCT. I would definitely be
19 talking about the weather and how ICBC selectively
20 chooses to manipulate data, and I will be able to
21 prove that, specially in cross-examination.

22 I said -- did I say MCT? We would be
23 talking about MCT.

24 The other thing there that I would like to
25 take ICBC to task in, one can do it in a written
26 submission, but actually it's a truncated process for

1 as much as one can say what you like in a written
2 submission, and even in final argument, you actually
3 have no response. There is no mechanism for a
4 response. And my particular vent would be these
5 traffic cameras. They're getting away with murder.
6 It is terrible. And ICBC are mandated by the
7 government to address the issue.

8 And from what I gather in the last
9 information request process, it didn't matter what the
10 government ordered, "You will implement a traffic
11 process," ICBC said, "We're going to study it." How
12 do they get away with that? They've been told to get
13 on with it. Get on with it. So an oral hearing would
14 be a joy to go after that one.

15 Thank you very much for listening.

16 THE CHAIRPERSON: And I'm assuming, Mr. Landale, that if
17 there were a second round IRs that you would not be
18 submitting intervener evidence apart from through
19 those letters?

20 MR. LANDALE: Yes. When it comes to interveners -- I
21 forgot to mention that. When it comes to intervener
22 evidence, I will be definitely talking about the
23 weather. I will be disputing quite a chunk of what
24 ICBC is claiming.

25 THE CHAIRPERSON: So you're suggesting that you would be
26 putting in intervener evidence apart from whether we

1 have a second round of IRs or not?

2 MR. LANDALE: Yes. Yes.

3 THE CHAIRPERSON: Thank you.

4 MR. LANDALE: But with the caveat, submitting evidence
5 and submitting argument is a truncated process. There
6 is no accounting or accountability held to it. And
7 that's where an oral hearing actually will equalize
8 the process. If I may.

9 Thank you.

10 THE CHAIRPERSON: Okay, just hold on. A question from
11 my colleague.

12 COMMISSIONER REVEL: I don't have a question for you,
13 Mr. Landale, but I do want to support your statement
14 that seniors are a very important group. And in
15 making that point --

16 MR. LANDALE: You're a good man, sir.

17 COMMISSIONER REVEL: -- I might say that I have vested
18 interest.

19 THE CHAIRPERSON: Thank you, Mr. Landale.

20 MR. MILLER: Mr. Chair, there's an addition to the order
21 of appearances, Mr. Todd Litman.

22 **SUBMISSIONS BY MR. LITMAN:**

23 MR. LITMAN: Thank you very much. My name is Todd
24 Litman, I'm executive director of the Victoria
25 Transport Policy Institute and I flew in this morning,
26 which is why I was a few minutes late.

1 I have intervener status, and I do plan to
2 submit some evidence. I bring in a transportation
3 planning and a policy and economic perspective.
4 Research that I've done, and other people have done,
5 show that there are some factors that affect crash
6 rates that ICBC is not taking into account in their
7 current projections.

8 In particular, there is very good research
9 showing a negative correlation between fuel prices and
10 crashes. So when fuel prices go up, people drive less
11 and exposure goes down and per capital crash rates
12 tend to decline, or per vehicle crash rates. And this
13 research has been done all throughout the world.

14 British Columbia has just gone through a
15 period, the last four or five years, when fuel prices
16 declined. So this effect has probably contributed to
17 some of the crash rate increases that ICBC is
18 experiencing.

19 And there is no evidence suggesting that
20 fuel prices will continue to decline. They have
21 probably plateaued. Of course, a lot of us have made
22 mistakes projecting fuel prices in the past.

23 **Proceeding Time 10:46 a.m. T22**

24 But unless fuel prices go much lower than they are
25 now, you would expect this multi-year trend to have
26 flattened. That there will -- that the effect of fuel

1 price on crashes will -- to increase crashes is
2 probably stopped.

3 And that's important because it probably
4 would somewhat reduce ICBC's projected cost increases,
5 and what's interesting is -- I raised this in my
6 queries that were submitted to ICBC, and ICBC does
7 acknowledge that that probably is a significant
8 impact. But ICBC has not been collecting information
9 on fuel price trends or doing targeted research. So
10 their models, their predict- -- their cost prediction
11 models, do not take into account this factor.

12 So I will be submitting some evidence
13 regarding that, and hopefully explore to what degree
14 that may have inflated or increased crash costs in the
15 past few years, and how that could affect their
16 projections.

17 Also, there is a detail, ICBC did
18 acknowledge that lower fuel prices is likely to
19 increase crashes because it increases congestion. And
20 I struggled with this, because if that was true, you
21 would see almost all of the price increases would have
22 occurred on a few congested highways. Only about ten
23 percent of all driving occurs under congested
24 conditions. And you would be able to -- and it would
25 be very geographic and temporal specific. You'd say,
26 "Oh, you know, this is increasing."

1 And so I realized there is -- it's a
2 terminology issue. I think what ICBC meant when they
3 said that fuel prices increase congestion is -- fuel
4 price declines increase congestion, is that fuel price
5 declines increase traffic density, which is a very
6 different thing. It's not congestion. It's not a
7 whole bunch of vehicles on one road that are slowing
8 each other, which is what congestion means to a
9 traffic engineer or a traffic planner. It's that
10 there are more vehicles per what we would call "lane
11 kilometre," that on a road there are more vehicles.
12 But they're not congesting, they're just -- they're
13 just exposing each other to a little bit more risk.

14 And there is good research on this. I do
15 plan to submit some of the research on the
16 relationships between traffic density and crashes.
17 And again, that -- also there is one of the factors --
18 the research on the impacts of fuel prices on crashes
19 indicates when fuel prices decline, people drive a
20 little bit faster. Or to put it differently, when
21 fuel prices are high, people try and save fuel by
22 driving a little bit slower. And so one of the
23 reasons that there seems to be this relationship, this
24 negative relationship between fuel prices or vehicle
25 operating costs and crashes is because people actually
26 -- the traffic is actually going a little bit slower.

1 And that's very good for safety.

2 So, anyway, I do plan to submit a little
3 bit of research on that, on how to incorporate price
4 -- transportation price effects, particularly fuel,
5 but some other price effects on crashes, and make some
6 suggestions of how -- I'm not prepared to do the
7 modeling. So, of course it will -- to really quantify
8 this will take a lot of -- some targeted research.
9 But at least suggest, or identify the research that
10 suggests the direction of impacts. So we can be
11 pretty confident that when the cost of driving goes
12 up, crashes per vehicle go down. And I can look at
13 some of that.

14 And also, our research identifies a number
15 of additional crash reduction strategies that are not
16 included, that have not been included in ICBC or the
17 Ernst & Young report, and I'll be -- and some of that
18 has to do with what you call transportation demand
19 management. Ways to encourage people to drive less
20 and use alternative forms of transportation. And
21 there is also good research on the safety benefits of
22 some of these strategies

23 **Proceeding Time 10:51 a.m. T23**

24 THE CHAIRPERSON: I have one question for you which
25 deals with the evidence that you are submitting. In
26 that evidence, are you also going to include some of

1 the -- what are the factors that cause changes in gas
2 pricing and what impact that may have either upwards
3 or downwards, given the volatility of oil pricing and
4 other factors?

5 MR. LITMAN: A lot of us have been humbled when we've
6 tried to predict what fuel prices were going to look
7 like in the future. Sure, I've done some research,
8 or, you know, I'm familiar with the research on that,
9 and, you know, right now -- a decade ago, or even five
10 years ago we projected that fuel prices were going to
11 be much higher now than they actually turned out to
12 be. That's the humbling that I've experienced. We've
13 projected, you know, that some of the trends were
14 going to continue and they didn't.

15 So, if you want, I could talk about that,
16 but for the purposes of this process, I think that's
17 primarily exogenous, that what I'm thinking of -- I'm
18 happy to provide that information if you think it's
19 useful, but what I'm mainly interested in is the
20 relationship between things like fuel prices and crash
21 rates. So I'd appreciate your guidance.

22 COMMISSIONER ENNS: Thanks. You didn't comment on your
23 preference with respect to the process.

24 MR. LITMAN: Right. I'm primarily thinking of submitting
25 documents, so I don't --

26 COMMISSIONER ENNS: I understand that, but what we're

1 trying to determine here is we've provided three
2 potential process. Do you have any of those that you
3 favour?

4 MR. LITMAN: No. I mean I think a -- it would be useful
5 to have a hearing, at least one hearing, but this is
6 -- I'm a novice here. I haven't been through this
7 process, so I'm still unclear how useful it is to have
8 multiple oral events. So at this point, I don't
9 know. I'm happy with whatever the Commission decides
10 to do.

11 COMMISSIONER ENNS: Thank you.

12 COMMISSIONER REVEL: In part, Mr. Litman, you've
13 addressed my question through my colleague's question,
14 but I'd just like to clarify a couple of points.

15 When you use the word "hearing" I
16 understand you to mean an oral hearing, rather than a
17 written hearing. Is that correct?

18 MR. LITMAN: Right. I think it is useful to have an
19 oral hearing, yes, so that was my point.

20 COMMISSIONER REVEL: And let's just -- if there were an
21 oral hearing, you would be, in theory, questioned on
22 the evidence that you filed. Would you be able to
23 equally as well address it should there be a written
24 hearing and there were a second round of
25 interrogatories and you received questions on your
26 evidence. Would that provide you a better chance to

1 be thoughtful in terms of addressing it from a
2 research standpoint?

3 It's quite difficult sometimes off the
4 cuff.

5 MR. LITMAN: Right. One of things I've learned is to
6 acknowledge what I don't know. And in oral hearings I
7 have to do that sometimes. Because there isn't time
8 to do research. But I do think -- I guess I would --
9 I still see some value in an oral hearing just because
10 it gives me a better idea of, particularly, what you
11 on the panel are thinking about. So even though I
12 think what I'm planning to do is submit documents with
13 this research, I do see a value in a oral hearing. So
14 at least one.

15 COMMISSIONER REVEL: Thank you very much.

16 MR. LITMAN: Yes, thank you.

17 THE CHAIRPERSON: Thank you.

18 SUBMISSIONS BY MR. MILLER:

19 MR. MILLER: Mr. Chair, staff have a few comments to
20 make.

21 With respect to the items set out in the
22 Commission's letter regarding process, staff takes no
23 position.

24 They do have comments in response to some
25 of the issues raised by Mr. Weisberg, though, on
26 behalf of TREAD.

Proceeding Time: 10:56 a.m. T24

1
2 The first is, there was a general theme
3 that rate design issues might help understand the
4 revenue requirement issues that are at play in this
5 hearing. It was a bit of a theme, so my response to
6 that first of all is, this is a revenue requirements
7 hearing, not a rate design hearing. And to the extent
8 that Mr. Weisberg and his client are not getting
9 responses to the questions they ask that they would
10 like, for example if ICBC says, well this is a rate
11 design matter, Mr. Weisberg is well experienced with
12 Commission matters, he knows the process, he can ask
13 the Commission to rule on it, make application. So,
14 if he is running into those difficulties, he should
15 apply, and he'll get an answer from the Commission
16 about whether or not the Insurance Corporation is
17 required to answer them.

18 With respect to another general theme,
19 which seemed to be around, there is concern from his
20 client about an apprehension of bias, I guess my
21 overarching response is, if Mr. Weisberg believes that
22 there is a reasonable apprehension of bias at play, he
23 should bring his application and have the panel rule
24 on it. In my view, it's entirely improper to come
25 here and make allegations about concerns about them to
26 try and influence a process. If he believes there is

1 an apprehension of bias, or reasonable apprehension,
2 make his application. It's not appropriate for him to
3 be asking the panel members what they were thinking or
4 doing. He can bring his application.

5 With respect to some of the more minor
6 items he raised about the timetable with, I guess was
7 an assertion that the intervenors were at a
8 disadvantage with option B given the break in the
9 spring, that was inadvertent on behalf of staff.
10 There was no intention, and this is a straw man, and
11 it's put out there for that reason, for people to
12 comment on it, its benefits and its frailties.

13 Another issue Mr. Weisberg raised was
14 staff, his assertion was, never asked any questions on
15 the independent reviews. Staff informs me that they
16 did. They did not specifically reference in the IRs
17 that they were referring to the report, but they have
18 definitely asked questions on matters raised in that
19 report. For example, fraud initiatives, road safety,
20 and investments. Those are all canvassed in
21 Commission staff IRs. So, again, his allegation that
22 something funny is going on between staff and the
23 panel and the Insurance Corporation is entirely
24 inappropriate.

25 Next, he referenced why certain documents
26 aren't on the record. Mr. Weisberg knows well that if

1 he thinks a document should be put on the record, he
2 can put it on. He can enter it if it's relevant. For
3 him to come here and make allegations that something
4 funny is going on because a document is not on the
5 record, that's easily solved by him putting it on the
6 record. And I will reference the fact that the panel
7 did say in one of its earlier letters, it's a public
8 document, and therefore the necessity for it actually
9 being on the record is dubious in any event. But the
10 questions have been asked on documents.

11 My final point with respect to his series
12 of allegations about why or questions about why the
13 Commission is not demanding that the Insurance
14 Corporation bring a rate design application is readily
15 apparent, we have no ability to do so under the
16 legislation.

17 Those are my comments.

18 THE CHAIRPERSON: Thank you, Mr. Miller.

19 I assume we are going to do reverse now, so
20 if we could start that process please?

21 **REPLY BY MR. WEISBERG:**

22 MR. WEISBERG: Mr. Chairman, and Commissioners, just some
23 quick comments in response to Mr. Miller's
24 submissions.

25 **Proceeding Time: 11:02 a.m. T25**

26 I am indeed aware that there is a potential

1 to bring an application to the Commission or a motion
2 for direction for further and better responses to
3 specific IRs.

4 The comments that Mr. Miller heard, his
5 recollection of what I said doesn't match exactly what
6 I believe I said. But what I understood agenda item 3
7 to be focused on was efficient and effective process
8 for this proceeding, and moving immediately to an
9 application does not seem to me intuitively to be the
10 most efficient way to proceed.

11 I advocated, as was my right, for a second
12 round of IRs. I didn't pull that idea or that concept
13 from the moon. It was in the straw dog process
14 options and well within the agenda. And I advocated
15 for that to happen. And based on whether that does or
16 not, I will exercise my judgment as to whether an
17 application for further and better responses is
18 required.

19 Mr. Miller also suggested that if there's
20 an apprehension of bias, then I should posthaste bring
21 an application in that respect. Again, I don't think
22 that that is the most efficient way. What I requested
23 today was I thought reasonable explanations of things
24 that are difficult to understand from this side of the
25 hearing room. I did not leap to conclusions that way.
26 And I am not leaping to file an application and

1 elevate things before I've given staff and the panel a
2 reasonable opportunity to answer the concerns that I
3 raised, the legitimate questions.

4 Mr. Miller said that it's not appropriate
5 to ask what the panel is thinking. If I overstep in
6 that respect, tell me that. But if you're willing to
7 share, my point was in a public hearing process
8 everyone benefits, including the Commission and the
9 panel if the customers, and interveners, and
10 interested parties have a better and clearer
11 understanding of the decisions that the panel makes.

12 Mr. Miller said that staff didn't
13 specifically reference the Independent Review Report,
14 but that it did ask about some issues in the
15 Independent Review Report. That's fine. There is, I
16 think, in the range of 1500 pages of responses so far.
17 We looked through and found no references to the
18 Independent Review Report. Certainty, one would
19 expect that there would be some overlap in the issue.
20 But nevertheless, in the absence of an explanation it
21 strikes us as odd that this large and significant and
22 in some respects very controversial document was not
23 specifically referenced when it's clearly been ruled
24 to be in scope in this hearing.

25 He said that I, or TREAD, can put whatever
26 documents on the record that we wish. I suppose

1 that's true. But, again, let's look at what's
2 efficient and effective. When this panel rules that a
3 document of that significance, the Independent Review
4 Report, is in scope in this proceeding, why should it
5 be up to an intervener to place it on the record? It
6 was commissioned by ICBC's board. It was received by
7 ICBC. It's apparently on ICBC's website.

8 **Proceeding Time 11:06 a.m. T26**

9 TREAD made a proper information request to
10 ask them to file it. They refused to do that. I
11 understand, although I haven't read the specific IR,
12 that MoveUP also requested that document to be put on
13 the record.

14 If we talk about efficiency, if that had
15 happened, Mr. Miller wouldn't have needed to make his
16 comments about it, I wouldn't have needed to make my
17 earlier comments about it, or these comments now.

18 The last comment that I've got noted is
19 that he observed that the legislation doesn't provide
20 the Commission with the ability to direct ICBC to
21 bring a rate design application forward. I don't
22 challenge that view. That's not what I was asking
23 about. It was trying to reconcile the decision of the
24 Commission coming out the of the 2013 RRA that
25 included a specific directive to respond in terms of
26 the plans that ICBC has.

1 Now, to my knowledge, those two letters
2 that are referenced in December 2015 and June 2016,
3 have not been publically available. If I'm wrong
4 about that, I don't mind having pie on my face. I
5 just want to see the letters. And I would also
6 appreciate an explanation why, if they haven't been
7 publically available before, that they should be now.
8 And certainly in respect of those documents, I can't
9 put on the record what I don't have.

10 Thank you.

11 THE CHAIRPERSON: Thank you, Mr. Weisberg.

12 **REPLY BY MR. QUAIL:**

13 MR. QUAIL: Yes, Mr. Chair and Commissioners, my brief
14 is not on behalf of this Commission or ICBC, but I
15 feel compelled to comment about submissions made this
16 morning on behalf of the intervener that chooses to
17 call itself TREAD. And in that respect I want to
18 second all of the comments my friend Mr. Miller made
19 and to provide my advice to this panel that those
20 comments were entirely sound in every respect.

21 If there was anything that was said on
22 behalf of that intervener, I would have a hard time
23 identifying it. I submit that it is improper to make
24 gratuitous imputations about the propriety of the
25 Commission staff and of ICBC. There's times over the
26 years when we felt frustrated with ICBC and dealing

1 with the process. In my submission there's a line
2 that was crossed this morning, and it was gratuitous,
3 it had no foundation in anything on the record, based
4 on speculation and should not have happened.

5 On the particular issue of the Ernst &
6 Young report, first of all I want to say there's been
7 discussion, perhaps attempting to co-opt my client
8 into this broadside against the Commission's process
9 and ICBC. We are entirely content with the URL of the
10 document being posted. To the extent it needs to be
11 on the record, in my submission, it's on the record,
12 and if a party has a difficulty clicking the link,
13 photocopying and seeing what it is, who is party in
14 this proceeding, that I find astonishing.

15 The actual history of that issue, as I
16 recall it, is that ICBC sought confirmation that the
17 report was not in scope, and I must say clearly a
18 great deal of its content is not in scope. There are
19 a number of issues in there, for example, dealing with
20 the regulatory regime which are not in scope. And I
21 might say in our IRs we sort of poked at that a little
22 bit with questions and I understand and accept the
23 response of ICBC that many of those issues are not in
24 scope. Fair enough. They don't belong there and they
25 should not be part of the process.

26 This is a revenue requirement hearing, it's

1 not a free-ranging inquiry into ICBC, its processes,
2 or the processes of the Commission.

3 The Commission -- anyway. Anyway, but the
4 Commission's response, as I interpreted it, was it
5 that it declined to rule that the report was not in
6 scope, but would not definitely say that all of its
7 contents were in scope.

8 **Proceeding Time 11:11 a.m. T27**

9 And I might add, I can think of no basis to suggest
10 there was anything improper. First of all, I think
11 the duty on Commission staff to specifically drill
12 into that document, in their IRs, and there's nothing
13 whatsoever improper about the document itself not
14 being explicitly referenced in the Information
15 Requests. My friend, on behalf of that intervener,
16 was at liberty to pursue the issue. He sought to do
17 that. Most of it is out of scope, and the response of
18 ICBC in my response is correct, and I agree with Mr.
19 Miller, that intervener has its remedy if it
20 disagrees, which it has chosen not to pursue.

21 Anyway, I won't go further into it. As I
22 say, there was -- I would have difficulty identifying
23 anything that was presented on behalf of that
24 intervener which, in my submission, belongs in a
25 procedural conference. We're here -- supposedly we're
26 here to talk about the issues raised by the Commission

1 about the way the agenda is to be established for
2 processing this application. And instead launching
3 into gratuitous broadsides impugning the motives and
4 the behaviour of many of the persons present in this
5 room in my submission should not have happened.

6 THE CHAIRPERSON: Thank you, Mr. Quail.

7 **REPLY BY MS. WORTH:**

8 MS. WORTH: Mr. Chair, members of the panel, on behalf of
9 BCOAPO, we would like to support the comments of Mr.
10 Miller regarding what was said by the counsel for
11 TREAD.

12 That being said, I would like to thank Mr.
13 Weisberg for identifying the deficiency that was
14 inadvertent on behalf of Commission staff, in not
15 recognizing the March break in Option B. And I would
16 ask that, should this Commission panel find it
17 appropriate to go that route, that the schedule be
18 adjusted in order to take that into consideration. I
19 have a somewhat selfish reason for asking that, I have
20 a couple of kids and I'm subject to that particular
21 restriction in my availabilities. But I know that
22 there are others within the room that are similarly
23 bound.

24 And those are my comments, thank you.

25 THE CHAIRPERSON: Thank you, Ms. Worth.

26 Mr. Ghikas.

1 **REPLY BY MR. GHIKAS:**

2 MR. GHIKAS: Thank you, Mr. Chairman, Commissioners.

3 I just wanted to start off by speaking to
4 first of all the comments of Ms. Worth. My friend,
5 Ms. Worth, the first comments that she had made just
6 simply with respect to her client's focus in this
7 proceeding. She expressed concern about the legal
8 representation rate, and about material damage and the
9 like. And certainly I simply wanted to note in that
10 regard that those two issues are discussed in the
11 *Hansard* on page 1890 as a key focus of the Minister.
12 And that there were a number of questions on material
13 damage, and the legal representation rate in this
14 proceeding, that have been answered, and some of those
15 fall within the category of questions that my friend
16 Mr. Quail indicated that he was happy with, in terms
17 of the material damage.

18 The second point that I wanted to address
19 is with respect to the additional process and the
20 value that that brings, and the counterweights in that
21 circumstance. Because in my submission that
22 consideration is always going to be a balance that the
23 Commission has to strike, at the end of the day.

24 My friend Mr. Weisberg put it in terms of
25 -- and I had his comments that it's more likely to
26 help than hurt to have further process. And in my

1 submission, the Commission should be wary of leaping
2 to that conclusion.

3 And the reason I say that is, first of all,
4 on one hand we all know that the more process that you
5 have, you're going to get more information on the
6 record. There is no question about that, and the real
7 question here is about whether that information is
8 going to assist the Commission in making the
9 determinations that it is required to make.

10 **Proceeding Time: 11:16 a.m. T28**

11 And that is the key determination here is really
12 setting the rate. And the rate, at the end of the
13 day, in my submission, is going to be hard-pressed to
14 be anything other than 6.4 percent.

15 And the other consideration, normally when
16 the applicant is here, there is always the caution of,
17 you know, the cost of the proceeding. In this
18 circumstance, I am not putting my weight on that.
19 What I am saying is there is an intuitional capacity
20 issue as well that the Commission should consider in
21 the circumstances, that the same people that are
22 answering IRs in this process, are the people who are
23 doing all of the work that people believe is so
24 valuable in support of government. And so that's not
25 to say -- they're not asking me to cry on the record
26 about that. What the point is, is that there is a

1 legitimate institutional capacity consideration that
2 should go into this. The amount of work that is
3 being, that is being required of ICBC's actuarial
4 staff and the like, is significant, and it should be a
5 consideration, and it will be up to the Commission to
6 weigh how much that plays into things.

7 The next point I wanted to address was my
8 friend Mr. Weisberg's questions -- or sorry, comments
9 about the Ernst & Young report and his general views
10 on ICBC and its willingness to provide information,
11 and his comments with respect to the Commission. I am
12 not going to belabor this and pile on. What I would
13 like to say is that ICBC submits, first of all, that
14 it is obvious from looking at the Ernst & Young report
15 that the key focus of that report is on mechanisms
16 that require legislative action. And it is in my
17 submission, also equally apparent that the requestor
18 was government, ICBC on behalf of government, it was a
19 report prepared by another third party, Ernst & Young,
20 not ICBC, but by a third party, for government. It is
21 being used by government to make decisions that only
22 government can make. And in my submission, that is an
23 important consideration.

24 That was the reason why ICBC made its
25 initial request to exclude it from scope. ICBC is
26 fully aware that that report is in the media, it's on

1 its own website, it's public, it's in the public
2 domain and the Commission identified that in its
3 previous order.

4 ICBC has answered significant questions
5 that deal with the underlying issues, many of which
6 are discussed in the Ernst & Young report, and my
7 friend Mr. Miller referenced the fact that many
8 questions that were asked by staff, and other parties,
9 addressed issues like claims, trans, and the like.
10 Obviously important issues, but they were answered
11 from the perspective of the data and analysis that
12 ICBC undertakes, not that Ernst & Young undertook, but
13 that ICBC undertakes, because that's the evidence that
14 ICBC can speak to. And in my submission, ICBC has
15 answered those questions as fulsomely as possible, and
16 it is with respect to what comes next that is the true
17 issue. That what steps government will end up taking
18 to deal with the issue that ICBC has been quite clear
19 in its own words, and in the words of the minister
20 that it is not sustainable, and that something has to
21 be done in the near term.

22 I would also note in that regard that -- I
23 would like to draw the Commission's attention back to
24 its reasons with respect to the decision on the Ernst
25 & Young report, and in my submission, it is clear from
26 reading those decisions -- I won't read it out, but it

1 is clear that the commission's concern was -- well,
2 actually I will read it out.

3 "At this early stage of the proceeding,
4 prior to any registration of intervenors or
5 submissions by parties of potentially
6 relevant evidence, the panel is reluctant to
7 restrict the scope of any document that is
8 in the public domain. Accordingly, ICBC's
9 request to exclude the independent review
10 report from the scope of the ICBC 2017 RRA
11 is denied. This panel may consider future
12 scope decisions should that become necessary
13 during the course of this proceeding."

14 **Proceeding Time: 11:21 a.m. T29**

15 So that's the context. It was an early
16 request upfront and ICBC understands and respects the
17 Commission's determination that at the point in the
18 proceeding there was -- the Commission was unwilling
19 to make a scoping order. And that's fine. And ICBC
20 as a result has responded to questions on the Ernst &
21 Young report. The issue is that the responses that
22 ICBC can give to those questions is limited by the
23 circumstances that I've already discussed.

24 So the answers are the best answers
25 available that ICBC can provide. They provided the
26 answers and in my submission the answers are as

1 complete as can reasonably be expected in the
2 circumstance. ICBC said that its working with
3 government in government's assessment of long-term
4 solutions and that government has indicated that it is
5 an issue for ICBC, a significant issue, and intends to
6 make changes.

7 On the point about the Ernst & Young report
8 that my friend, Mr. Weisberg, raised with respect to
9 the ICBC refusing to file it, certainly the view that
10 I take and I consider would echo my friend Mr. Quail's
11 comments, which is that it has been my experience that
12 providing a link in information request responses is
13 essentially incorporating the documents by reference
14 and that it legally speaking is on the record at that
15 point.

16 I appreciate my friend's comments that he
17 didn't see that the same way, and there was certainly
18 every intention of ICBC in response to those questions
19 to put the document on the record in response to those
20 IRs. In my submission, we successfully completed that
21 desire by providing the URL and that it's readily
22 available for my friend and the public to make
23 reference to in this proceeding as they see fit.

24 My friend, Mr. Weisberg, made a number of
25 comments with respect to rate design and cited some
26 submissions that I had made back in 2014. I stand by

1 those submissions. There is a clear distinction
2 between rate design issues and the rate design itself,
3 and if a rate design determination has a revenue, an
4 overall revenue impact on the Corporation, that is a
5 line item in the revenue requirement and it gets
6 picked up and the parties are free to ask about it.

7 That principle has been applied in the
8 circumstances in response to questions put forward.
9 And I would turn you just for an example, I won't take
10 you there, but cite as an example, my friend
11 referenced the reduced crash forgiveness issues. And
12 there were questions on that and you can see, for
13 example, in BCUC IR 4.1 and 4.2, and TREAD 90.7 that
14 -- particularly BCUC 4.2 is an area where the revenue
15 requirement implications of such changes were
16 discussed. And so in my submission, ICBC is following
17 that line and I would -- if my friend upon reflection
18 of those things has issues with respect to the
19 completeness of responses, he does have an avenue to
20 pursue that through the Commission process if he sees
21 fit.

22 So, with respect to the process, if further
23 process is required, if the Commission feels that it's
24 appropriate having given consideration to the balance
25 that I referred to previously, my submissions would be
26 that any further process, be it written or oral,

1 will see the benefit of those initiatives.

2 So, subject to any questions, Mr. Chairman,
3 I will conclude.

4 THE CHAIRPERSON: Thank you, Mr. Ghikas.

5 MR. GHIKAS: Thank you.

6 THE CHAIRPERSON: And Mr. Miller, I think that's about
7 it, is it not?

8 MR. MILLER: There is nothing further that I'm aware of,
9 Mr. Chair.

10 THE CHAIRPERSON: Nothing further? Okay. That being the
11 case, we will take all the comments that were made
12 today about the procedure going forward, and the
13 regulatory timetable, and we'll be issuing an Order as
14 a result of that shortly.

15 So with that note, thank you very much and
16 this conference is now adjourned.

17 **(PROCEEDINGS ADJOURNED AT 11:28 A.M.)**

18

19

20

21

22

23

24

25

26

I HEREBY CERTIFY THAT THE FORGOING
is a true and accurate transcript of
the recording provided to me, to the
best of my skill and ability.



A.B. Lanigan, Transcriber

December 5th, 2017