



ONTARIO ENERGY BOARD

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VOLUME: 1

DATE: November 17, 2009

Gordon Kaiser	Presiding Member and Vice-Chair
Cynthia Chaplin	Member
Ken Quesnelle	Member

EB-2009-0180
EB-2009-0181
EB-2009-0182
EB-2009-0183

THE ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

AND IN THE MATTER OF an application pursuant to section 60(1) of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. seeking an electricity distribution licence;

AND IN THE MATTER OF an application pursuant to section 86(1)(a) of the *Ontario Energy Board Act, 1998* by Toronto Hydro Energy Services Inc. seeking an order granting leave to sell streetlighting assets as an entirety or substantially as an entirety to 1798594 Ontario Inc.;

AND IN THE MATTER OF an application pursuant to section 86(1)(b) of the *Ontario Energy Board Act, 1998* by Toronto Hydro Energy Services Inc. seeking an order granting leave to sell streetlighting assets necessary in serving the public to 1798594 Ontario Inc.;

AND IN THE MATTER OF an application pursuant to section 86(1)(c) by Toronto Hydro-Electric System Limited and 1798594 Ontario Inc. seeking leave to amalgamate;

AND IN THE MATTER OF a request pursuant to section 77(5) of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. seeking the cancellation of the distribution licence applied for in a separate application under section 60(1) of the *Ontario Energy Board Act, 1998*;

AND IN THE MATTER OF an application pursuant to section 18(2) of the *Ontario Energy Board Act, 1998* by 1798594 Ontario Inc. and Toronto Hydro-Electric System Limited for an order assigning Toronto Hydro-Electric System Limited's electricity distribution licence to a proposed amalgamated entity consisting of 1798594 Ontario Inc. and Toronto Hydro-Electric System Limited.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Tuesday, November 17, 2009,
commencing at 9:36 a.m.

VOLUME 1

BEFORE:

GORDON KAISER	Presiding Member and Vice-Chair
CYNTHIA CHAPLIN	Member
KEN QUESNELLE	Member

A P P E A R A N C E S

LJUBA COCHRANE	Board counsel
GONA JAFF	Board Staff
GEORGE DIMITROPOULOS	
MARK RODGER	Toronto Hydro-Electric System
JOHN VELLONE	Limited and affiliates
IAN BLUE	City of Toronto
SARAH JONES	
JOHN DeVELLIS	School Energy Coalition (SEC)
PETER FAYE	Energy Probe Research Foundation
DAVID MacINTOSH	
MICHAEL BUONAGURO	Vulnerable Energy Consumers'
	Coalition (VECC)
IAN MONDROW	Electrical Contractors Association
	of Ontario (ECAO) and Greater
	Toronto Electrical Contractors
	Association (GTECA)
KELLY FRIEDMAN	Electricity Distributors
MAURICE TUCCI	Association (EDA)
ALSO PRESENT:	
COLLEEN RICHMOND	Toronto Hydro-Electric System
GLEN WINN	Limited
COLIN McLORG	
KATHI LITT	City of Toronto

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1 Tuesday, November 17, 2009

2 --- Upon commencing at 9:36 a.m.

3 MR. KAISER: Please be seated.

4 The Board is sitting this morning in connection with
5 applications that were filed on June 15th by three
6 subsidiaries of Toronto Hydro Corporation: a numbered
7 company, 1798594 Ontario, known as NewCo; Toronto Hydro
8 Energy Services Inc. and Toronto Hydro-Electric Systems
9 Limited. These are applications under section 60, 86 and
10 77 of the Ontario Energy Board Act.

11 These applications collectively seek a declaration by
12 the Board that the assets associated with streetlighting in
13 the City of Toronto be deemed to be a distribution system
14 and ultimately to make the streetlighting assets now owned
15 by Toronto Hydro Energy Services Inc., part of a new
16 amalgamated distribution company consisting of Toronto
17 Hydro-Electric Systems Limited - and NewCo. That
18 amalgamated company is known as New THESL, and no doubt
19 will be given a more glorious name at some point.

20 The specific applications are as follows: First, an
21 Order granting the issuance of a distribution licence to
22 NewCo, the numbered company, pursuant to section 60 of the
23 Act, and as I indicated previously in that Order, the
24 applicant requests that the Board make a determination that
25 the assets associated with streetlighting in City of
26 Toronto are deemed to be a distribution system.

27 Those assets are set out in section 2 of the Asset
28 Purchase Agreement that is in evidence.

1 Secondly, an Order granting leave to Toronto Hydro
2 Energy Service Inc. to sell the streetlighting system to
3 NewCo pursuant to section 86(1)(a) of the Act.

4 Thirdly, an Order granting Toronto Hydro-Electric
5 Systems Ltd. leave to amalgamate with NewCo pursuant to
6 section 86(1)(c) of the Act.

7 And, finally, an Order approving the cancellation of
8 the electricity distribution licence of Toronto Hydro-
9 Electric Systems Ltd. and NewCo pursuant to section 77(5)
10 of the Act and approving, the issuance of a new electricity
11 distribution licence to the amalgamated corporation, New
12 THESL, which will come into existence on the amalgamation
13 of NewCo and THESL.

14 May we have the appearances, please?

15 **APPEARANCES:**

16 MR. RODGER: Good morning, Mr. Chairman, Members of
17 the Panel. Mark Rodger appearing as counsel to Toronto
18 Hydro-Electric System Limited and the affiliates, who are
19 the applicant in this case. With me this morning is my
20 colleague, Mr. John Vellone, and from Toronto Hydro, to my
21 right, we have Colleen Richmond, and to my left Mr. Glen
22 Winn and Colin McLorg.

23 MR. KAISER: Thank you.

24 MR. BLUE: Ian Blue for the City of Toronto, and
25 sitting with me on my --

26 MR. QUESNELLE: Excuse me, Mr. Blue, I wonder if you
27 could turn your microphone on, please.

28 MR. BLUE: Mr. Chairman, my name is Ian Blue. I am

1 counsel for the City of Toronto. With me this morning
2 sitting on my left, your right, is my student, Ms. Sarah
3 Jones. On my right and on your left is Kathi Litt, the
4 city's consultant.

5 MR. KAISER: Thank you, Mr. Blue.

6 MR. FAYE: Good morning, Mr. Chair, Peter Faye
7 representing Energy Probe, and with me is David MacIntosh
8 from Energy Probe.

9 MR. KAISER: Mr. Faye.

10 MS. COCHRANE: Good morning, Mr. Chair. Ljuba
11 Cochrane, counsel for Board Staff, and with me are Gona
12 Jaff and George Dimitropoulos on behalf of Staff.

13 MR. KAISER: Mr. Rodger. I'm sorry, we have some
14 people in the back row.

15 MR. DE VELLIS: Good morning, John DeVellis, School
16 Energy Coalition.

17 MR. BUONAGURO: Michael Buonaguro, counsel for VECC.

18 MR. MONDROW: Good morning, Mr. Chairman, Panel
19 Members. Ian Mondrow here today for ECAO, the Electrical
20 Contractors Association of Ontario, and GTECA, the Greater
21 Toronto Electrical Contractors Association.

22 MR. KAISER: Thank you.

23 MR. TUCCI: Good morning. It's Maurice Tucci from the
24 Electricity Distributors Association, and later today I
25 will be joined by Kelly Friedman, our counsel.

26 MR. KAISER: Mr. Tucci. Anyone else?

27 Mr. Rodger.

28 **OPENING STATEMENT BY MR. RODGER:**

1 MR. RODGER: Thank you, Mr. Chairman. Mr. Chairman,
2 with the Board's permission, I would like to make a brief
3 opening statement to be followed by Toronto Hydro's witness
4 panel, comprised of the four gentlemen that will be
5 introduced to you thereafter.

6 MR. KAISER: Go ahead.

7 MR. RODGER: Mr. Chairman, the Toronto Hydro
8 applications before you today pertain to a surviving trace
9 of history that has, in essence, fallen through the cracks
10 of many other significant legislative and industry
11 developments that have impacted the Ontario distribution
12 sector over the past number of years.

13 The Energy Competition Act came into force 12 years
14 ago. This legislation was responsible for restructuring
15 much of the electricity sector. The restructuring included
16 the transformation of Ontario's distribution utilities from
17 being, in effect, an arm of the municipal government to
18 becoming for-profit commercial corporations created under
19 the Business Corporations Act.

20 Although this Board has heard hundreds of applications
21 on myriad issues affecting the distribution sector over
22 these past 12 years, it is interesting to note that the
23 Toronto Hydro applications before you today are novel.
24 They have not been directly presented to the Board as
25 applications up to this time.

26 The subject matter of these applications,
27 streetlighting in the City of Toronto, is an outstanding
28 and unresolved seamless issue that is a holdover from

1 another era, which featured a very different regulatory
2 paradigm of the former Ontario Hydro.

3 Streetlighting was not part of the discussions that
4 resulted in the McDonald committee report nor was this
5 subject addressed in any fashion in the province's white
6 paper on restructuring that culminated in the Energy
7 Competition Act, 1998.

8 You will hear today, and the prefiled evidence
9 reflects this, that streetlighting was an integral part of
10 Toronto Hydro's distribution system for the vast majority
11 of the last century.

12 In fact, the prefiled evidence of Toronto Hydro
13 indicates that streetlighting was one of the key factors in
14 the early 1900s that convinced Torontonians that
15 electrification was a positive development for the city to
16 keep the walkways and street lit at night.

17 Streetlighting was only transferred from the municipal
18 utilities to their host municipalities in the 1980s under a
19 policy of the former Ontario Hydro.

20 Now, fast forward to today. In 2009, Toronto Hydro is
21 now possessed of responsibilities that none of us could
22 have foreseen one decade ago. Under the Green Energy Act,
23 Toronto Hydro is not simply a wires company that delivers
24 electricity. It is now considered to be a provincial
25 resource to facilitate and harvest renewable generation
26 into its network. It is an information highway for smart
27 meters and for implementing new smart grid technologies.
28 And it may become the critical new fuel station to support

1 electric cars.

2 So with a broader eye to the requirements and
3 challenges of the immediate future, we are here before you
4 today to remedy an unresolved situation from the past.

5 The applications before you seek various approvals,
6 but the end result is to reintegrate Toronto's
7 streetlighting system back into the LDCs, just like it has
8 been for most of the past century.

9 You will hear many reasons why the status quo
10 situation should be resolved to return streetlighting back
11 to the LDC, its proper home, reasons of safety, enhanced
12 maintenance, efficiency, elimination of confusion and
13 ambiguity, and more, but also that no harm will result from
14 the amalgamation of the LDC and streetlighting, which is
15 the central test the Board applies for merger applications.

16 So with the relief Toronto Hydro seeks, the intention
17 is to bring closure to Toronto Hydro streetlighting as a
18 seamless issue and to restore streetlighting to its proper
19 role, function and home as another key ingredient of
20 electricity distribution.

21 And with that, Mr. Chairman, I would like to call the
22 witness panel.

23 MR. KAISER: Thank you.

24 MR. RODGER: Gentlemen, if you could come forward to
25 be sworn in, please.

26 **TORONTO HYDRO-ELECTRIC SYSTEM LIMITED - PANEL 1**

27 **Pankaj Sardana; Sworn**

28 **Jean Sebastien Couillard; Sworn**

1 **Ben LaPianta; Sworn**

2 **Rick Cook; Sworn**

3 **EXAMINATION BY MR. RODGER:**

4 MR. RODGER: Thank you, Mr. Quesnelle.

5 So first just to introduce the panel, Mr. Chairman, to
6 my right is Mr. Pankaj Sardana. Then Mr. JS Couillard,
7 Mr. LaPianta, and Mr. Rick Cook.

8 Now, Mr. Chairman a week or so ago, we sent a package
9 to the Board and all parties containing the CVs of all of
10 these witnesses. I wonder if we could have that collection
11 of CVs marked as an exhibit, please

12 MR. KAISER: Yes. What number is that?

13 MS. COCHRANE: That will be Exhibit K1.1.

14 **EXHIBIT NO. K1.1: CVS OF WITNESS PANEL MEMBERS**

15 MR. RODGER: Thank you.

16 So, Mr. Couillard, starting with you, could you please
17 introduce yourself, please, including your title at Toronto
18 Hydro?

19 MR. COUILLARD: Yes. I am JS Couillard. I am the
20 chief financial officer for Toronto Hydro Corporation.

21 MR. RODGER: And Mr. Sardana.

22 MR. SARDANA: Yes. Thank you. I am vice president
23 and treasurer and regulatory affairs of Toronto Hydro-
24 Electric System Limited.

25 MR. RODGER: And Mr. LaPianta.

26 MR. LAPianta: Yes. Thank you. I am vice president
27 of distribution grid management.

28 MR. RODGER: And Mr. Cook.

1 MR. COOK: General manager of Toronto Hydro Energy
2 Services Inc., streetlighting division.

3 MR. RODGER: And gentlemen, the -- am I correct when I
4 say that the CVs that have been prefiled with the Board,
5 and now Exhibit K1.1, that reflect your background and
6 positions at this time?

7 MR. COOK: Yes.

8 MR. LaPIANTA: Yes.

9 MR. COUILLARD: Yes.

10 MR. SARDANA: Yes.

11 MR. RODGER: And panel members, was the application
12 and supporting materials prepared by you or under your
13 supervision?

14 MR. COOK: Yes.

15 MR. LaPIANTA: Yes.

16 MR. COUILLARD: Yes.

17 MR. SARDANA: Yes.

18 MR. RODGER: And is the evidence before the Board
19 today, to the best of your knowledge, an accurate
20 reflection of the company's affairs?

21 MR. COOK: Yes.

22 MR. LaPIANTA: Yes.

23 MR. COUILLARD: Yes.

24 MR. SARDANA: Yes.

25 MR. RODGER: And do you each adopt it as your own
26 evidence in this proceeding?

27 MR. COOK: Yes.

28 MR. LaPIANTA: Yes.

1 MR. COUILLARD: Yes.

2 MR. SARDANA: Yes.

3 MR. RODGER: Now, I would like to begin my examination
4 with a letter from the Ontario Energy Board, dated October
5 21st, 2009. And Mr. Chairman, this was the letter that
6 requested additional information from Toronto Hydro in
7 respect of the design and regulatory oversight requirements
8 of the Electrical Safety Authority pertaining to the
9 streetlighting system, and Toronto Hydro filed its response
10 and attachments on November 6th and copies were circulated
11 to the Board and all intervenors.

12 And I wonder if we might give that package an exhibit
13 number, as well, Mr. Chairman.

14 MR. KAISER: Yes.

15 MS. COCHRANE: That will be K1.2.

16 **EXHIBIT NO. K1.2: LETTER TO THE ONTARIO ENERGY BOARD,**
17 **DATED OCTOBER 21, 2009.**

18 MR. KAISER: Thank you.

19 MR. RODGER: Thank you. So, Mr. Cook, if I could
20 start with you, please, and I want you to refer to question
21 1 in the Board's October 21st letter, now Exhibit K1.2.

22 Can you please describe, using the point of supply
23 referenced in the letter as the demarcation point, the
24 design and regulatory oversight requirements of the
25 Electric Safety Authority pertaining to the streetlighting
26 system as non-distribution assets?

27 MR. COOK: Yes. I would like to make... sorry.

28 MR. RODGER: And you are making use of the audio-

1 visual?

2 MR. COOK: Yes, I will be. Making three initial
3 points and then moving to the diagrams; you see the first
4 one behind me.

5 MR. RODGER: And then, Mr. Cook, if I could just stop
6 here for a second, the -- the drawing on the screen right
7 now, entitled "Low voltage electrical infrastructure
8 integration with LDC plant," does that comprise one of the
9 attachments of K1.2?

10 MR. COOK: That is correct.

11 MR. RODGER: Okay. And maybe as you go through them
12 you could just reference the page number so we have a
13 complete record.

14 MR. COOK: I will.

15 MR. RODGER: What page number it appeared on the --
16 K1.2.

17 MR. KAISER: It is the back of 9 of 16, I think.

18 MR. RODGER: So I believe --

19 MR. COOK: I'd be able to address the actual drawing
20 number, if that is sufficient.

21 MR. RODGER: So it's -- it's -- I believe it is
22 Exhibit C.

23 MR. COOK: That's correct.

24 MR. RODGER: In the -- in the package, which is
25 diagram 1.

26 MR. COOK: Yes, I have it.

27 MR. RODGER: Okay. Go ahead, sir.

28 MR. COOK: Currently under the status quo, the

1 streetlighting system is not considered a distribution
2 asset. It does fall under the Ontario Electrical Safety
3 Code, and the ESA performs a myriad of functions, one being
4 inspection of new equipment, as well as existing equipment
5 through a repair and replacement. I would also like to add
6 that prior to the transfer from the LDC to the City of
7 Toronto, streetlighting was exempt from the Code.

8 The challenges that we have are that the supply point
9 and the demarcation ownership point change as different
10 infrastructure is added to the distribution line.

11 And it is probably easiest to go through the actual
12 diagrams here, to demonstrate that point. And I direct you
13 to the diagram 1 that is up behind me here; I believe on
14 your screens in front of you, as well.

15 What we have here is the base case, where the red
16 square that is there is the LDC or THESL's chamber where
17 the power would be coming from.

18 The demarcation point is quite easy to determine
19 here. As you see, the green line travelling down the
20 street where we have handwells in front of each of the
21 poles, which is that circular notation on the diagram, and
22 it feeds that string of lights down the -- down the
23 boulevard.

24 You can also see the blue line there, identifying
25 where the separation between Ontario Reg. 22/04 pertaining
26 to distribution and where the Code applies to the balance
27 of the -- of what is identified here on the diagram.

28 I would like to now take you to diagram number 2.

1 MR. RODGER: And Mr. Cook, just to be clear, when you
2 say the Code, you're referring to the Ontario Electric --
3 Electrical Safety Code?

4 MR. COOK: Yes, that's correct.

5 MR. RODGER: Thank you.

6 MR. COOK: Here in diagram 2, you see, again, if we
7 were to use the blue line as an indicator, how Ontario Reg.
8 22/04 and the Ontario Electrical Code has shifted.

9 What we have now is Bell Canada has requested to have
10 a phone booth installed along the system, and in order to
11 facilitate that, the distribution system is extended now
12 from the chamber past the first pole into the handwell
13 where the phone booth is.

14 What we experience here now is the ESA inspector
15 coming out with my crews would attend that first handwell
16 adjacent to our pole and expect to have Code requirements
17 followed in that. And then moving down to the other
18 handwell where the telephone booth is, expecting to have
19 distribution.

20 And that is where we have a difference between the
21 Ontario Regs and the Code requirements, and how the actual
22 distribution line extends.

23 MR. QUESNELLE: Excuse me, Mr. Cook, if I could just
24 interject. I am not sure I followed that last comment that
25 you just made of the ESA expect -- what their expectations
26 were.

27 You mentioned the coming out of the LDC chamber. You
28 were under the -- the Regulation 22/04, and that first

1 handwell you've got marked here as still being -- as red.
2 Are you saying that that -- the expectation is that would
3 be Code or the Regulation?

4 MR. COOK: That would be Regulation. That
5 infrastructure is now distribution, because it is
6 travelling down the length of that line to get to the
7 actual Bell booth.

8 MR. QUESNELLE: So the demarcation point is at the
9 handwell?

10 MR. COOK: Demarcation point would be moved further
11 along where the supply point is, where the Bell phone booth
12 is.

13 MR. QUESNELLE: Okay.

14 MR. COOK: So originally back to the first diagram,
15 you can see where the demarcation point and point of supply
16 is in the chamber. And as we move down the line, as the
17 distribution line needs to extend to pick up a USL
18 customer, that that demarcation and supply point has
19 extended.

20 MR. QUESNELLE: I just want to be clear on this
21 point. Between the LDC chamber and the telephone booth,
22 you have a street light fixture.

23 MR. COOK: Yes.

24 MR. QUESNELLE: Is that also what -- something you
25 consider a point of supply now?

26 MR. COOK: The point of supply for the street light
27 itself would be that handwell, yes, sir.

28 MR. QUESNELLE: You have introduced a new demarcation

1 point there are now two, whereas before there was one.

2 MR. COOK: Correct.

3 MR. RODGER: Mr. Cook, a minute ago you mentioned
4 USL. That is unmetered scattered load, is it?

5 MR. COOK: That's correct.

6 MR. KAISER: If I could just ask you, the extension of
7 the red line, if I could call it that, are you suggesting
8 that increase the jurisdiction of the ESA?

9 MR. COOK: Yes. However, no legal transfer of that
10 asset has taken place. However, functionally, to provide
11 power to that unmetered scattered load, that line has
12 transitioned into a distribution line.

13 MR. KAISER: And the extension of the ESA
14 jurisdiction, if I could use that term, what is the
15 practical effect of that? What additional obligations does
16 that place on you?

17 MR. COOK: It is a matter of, I think, the ambiguity
18 and confusion we have with respect to the ESA inspector
19 coming to one of those handwells, and, again, the
20 difference between the Code and the regulation. I will use
21 one example being the connector type that is utilized.

22 The expectation of the ESA inspector would be somewhat
23 looking in there to define those connections as Code
24 compliant. However, he may find something that is under
25 the regulatory regime and not consistent with what we would
26 use in a streetlighting Code application.

27 MR. KAISER: So in the practical world, if a telephone
28 booth popped up, as you have shown in slide 2, the ESA boys

1 would come in, and what would be the practical
2 consequences? They would tell you to change certain
3 equipment because it no longer complied with their
4 requirements, or what?

5 MR. COOK: That's exactly the case that we're going
6 through, yes, that we have inspectors out there with my
7 crews. The expectation would be that those handwells that
8 have serviced that streetlighting line in the past would
9 have Code-compliant connectors and they would find
10 something other than that. So that would be the
11 implication.

12 MR. KAISER: Thank you.

13 MR. COOK: I would like to move on to diagram
14 number 5.

15 You can see this is quite a busy slide, but does
16 depict what happens out on the streets in Toronto. I will
17 start moving progressively down the line and showing you
18 now that that boulevard has pretty much transitioned into a
19 distribution line.

20 So, again, coming out of the chamber and moving down
21 the line, we now have a streetlighting pole that at the top
22 of the pole we actually have a USL billboard that is
23 installed there. Moving down again, the Bell booth that we
24 have previously discussed, again now another handwell
25 servicing a street light. Now what has been put in down
26 towards the end of the line is a bus shelter, and that also
27 is a USL load that we have.

28 Then, finally, on the last pole we have a seasonal

1 decoration that could be installed by a business
2 improvement area that requires a GFI.

3 In these two cases, you can see that actually more
4 than the distribution line is being utilized to feed the
5 USL, that in fact now we are using two streetlighting
6 poles, have transitioned to their function being to supply
7 distribution to the USL decorative seasonal decoration.
8 The GFI, as well as at the top of the first pole in the
9 line, a service has been strung over to the billboard and,
10 therefore, utilizing that pole as a raceway to bring
11 distribution power to the top of the pole over to the
12 billboard.

13 And you can see now, with the ESA inspector coming and
14 opening up the handwells, how he is going to be confused,
15 as well as our crew, with respect to enforcement of Code or
16 with the Ontario Reg. You can see the blue line there
17 illustrating that that entire line, previously
18 streetlighting, has now transitioned functionally to a
19 distribution circuit.

20 MR. KAISER: Now, aside from the confusion, going back
21 to the practical consequences, I understand the change that
22 is taking place here. What have been the practical
23 consequences? Have they required you, in the case of slide
24 5 where there is a substantial change in the system, to
25 make significant changes to your system at significant
26 cost, or have they said, We'll just go with what's there?

27 MR. LaPIANTA: I can take that question.

28 I think the reverse has also been true. I think what

1 we have seen on the regulated side of the business is that
2 the ESA has asked us to change standards, for instance, for
3 example, in the handwell, change a standard that otherwise
4 has been acceptable for the past 40 years and that was
5 deemed to be under regulation.

6 But the ESA interprets that demarcation point as being
7 under Code, and, therefore, are asking us to make changes -
8 - asking the regulated business to make changes to that
9 particular piece of equipment for it to comply with Code,
10 when, in reality, it's been under the Ontario Regulation
11 22/04 for as long as we can remember. So the corollary is
12 also true.

13 For example, what Mr. Cook alluded to is the
14 connector. The utilities typically use split bolt
15 connectors inside the handwells. A split bolt connector is
16 not, per se, compliant with Code, and, to that extent, the
17 ESA has been asking us to replace these connectors within
18 the handwell to be compliant with Code.

19 MR. KAISER: This is maybe a bit off -- is there any
20 debate between the two of you as to whether -- leaving
21 aside the legality, whether the Code or the regulation
22 applies, is there any issue as to whether these changes
23 that would be required if you were to comply with Code are
24 really necessary, or is it accepted that there is a
25 practical requirement to make the change?

26 I mean, is this just a battle about legal
27 jurisdiction, or are there legitimate safety requirements
28 that compel the changes being requested by the ESA?

1 MR. LaPIANTA: Well, I think clearly, from again --
2 from an engineering perspective, the existing equipment,
3 the type, the nature of the connector that is now used by
4 utilities is a perfectly acceptable utility practice, and,
5 when applied properly, with proper workmanship, is as safe
6 or safer than some of, for instance, the gel cap connectors
7 that the ESA suggested that utilities use.

8 MR. KAISER: Do you meet with the ESA to sort of
9 resolve these technical issues as to what they will accept
10 and what they won't accept?

11 MR. LaPIANTA: Yes. In fact, as a matter of fact,
12 we're actively working with the ESA to resolve still some
13 of the outstanding issues that were found arising from the
14 contact voltage emergency in February.

15 MR. KAISER: Thank you.

16 MR. COOK: Finally, I would like to move to diagram
17 number 6. What is happening here is that out of the LDC
18 chamber, moving all the way down to the end of the
19 distribution line, you will see traffic signals.

20 What we are representing here is that if a fault in
21 the underground cable - you will see that adjacent to the
22 first pole - occurs, we would lose power to the traffic
23 signals.

24 An LDC crew would come out to address that power
25 outage for their USL customer, and the only means that they
26 would have to resolve that would be slack stringing that
27 red line that you see, which is the temporary conductor.

28 So now we have, again, the distribution lines being

1 the one that is faulted on the underground and also the one
2 that we have strung above, and again this being a temporary
3 means being attached to the streetlighting poles that are
4 Code, and again is another representation of how it is --
5 intermingles the two systems and also puts the Ontario Regs
6 and Code issue in light.

7 MR. RODGER: Mr. Cook, let me ask you. Let's assume
8 that your streetlighting crew was the first on the scene
9 and there was a street light out. Would the streetlighting
10 crew also explore the line to see whether the traffic
11 signals were out and, if so, fix it if they were out?

12 MR. COOK: No, they wouldn't. They would primarily
13 look at our asset and try to restore that, and if they did
14 see that something like the traffic signal was out, they
15 would advise THESL.

16 MR. RODGER: That would require a second dispatch of a
17 crew just to fix the traffic light issue?

18 MR. COOK: That's correct.

19 MR. RODGER: All right. Thank you, Mr. Cook. I am
20 wondering, Mr. LaPianta, do you have anything to add from
21 the context now of the regulated LDC, Toronto Hydro-
22 Electric System Limited?

23 MR. LaPIANTA: Yes, I do. Mr. Chairman and Board
24 Members, I am going to, in essence, review what Mr. Cook
25 has just presented to you, but there is a number of simple,
26 but yet important, distinctions that I want to make.

27 For that, I would like to refer the Board back to
28 diagram number 1. Let's assume that this diagram in fact

1 represents January 1st of 1989, the date the streetlighting
2 assets were in fact transferred by the LDC back to the
3 city.

4 Again, as you see here, we have a simple
5 streetlighting configuration, three street light poles fed
6 from an LDC chamber.

7 The ownership and demarcation point at that time would
8 legally have been set at the date of the asset transfer.
9 That is to say the LDC ownership would end at the LDC
10 chamber and the streetlighting ownership would begin at
11 that same point.

12 As such, and as the Board is no doubt aware, Ontario
13 Regulation 22/04 would in fact apply only so far as the
14 ownership demarcation point, that being the LDC chamber.
15 Anything beyond that point would be governed by the Code.

16 The second point I want to make -- and I would like to
17 refer the Board to diagram number 2 -- assume a point in
18 time, let's say 1992. We've now introduced a Bell
19 telephone booth, as we've heard from Mr. Cook. The
20 distribution line has in fact been extended to feed this
21 unmetered scattered load. So one must ask themselves the
22 question: If Reg. 22/04 applies up to the Bell telephone
23 booth, did ownership of the underground line transfer from
24 the city back to the LDC?

25 The obvious answer is no. Given that no legal
26 transfer of the ownership has in fact occurred on that
27 line, and using the strict legal interpretation, Reg. 22/04
28 does not apply to that line.

1 So this, in and of itself, presents a number of
2 challenges, clearly the biggest being the unclear point of
3 demarcation between the LDC and the streetlighting assets.
4 And I went in -- into this fact in some detail in my
5 affidavit dated June 15th, 2009.

6 The practical result is that in fact the demarcation
7 point is assumed. And thus ownership is assumed. Both are
8 determined on a case-by-case basis, depending on the type
9 and location of the equipment on the line, and where it is
10 attached.

11 Public safety is our principal concern when making
12 this assessment, but as explained by Mr. Cook, THESI crews
13 and ESA determine to the best of their ability, but still
14 via an assumption, the point of supply on a case-by-case
15 basis.

16 THESL crews then do the best they can by filling in
17 this gap by making operational assumptions that the
18 remaining assets are part of the distribution system and
19 therefore governed by 22/04.

20 The third point I want to make is to clarify the
21 nature of the regulatory gap. To be clear, the regulatory
22 gap that was referenced in our November 6th response is not
23 a safety gap.

24 THESL, THESI and the ESA make real-time prudent
25 operational assumptions that only years of experience can
26 make, to ensure that the entire distribution system and the
27 streetlighting system are governed by either the Code or
28 Reg. 22/04.

1 Anything less would put safety at risk by potentially
2 having the assets governed by neither set of rules.

3 Instead, and what exists, is a regulatory gap between
4 the operational reality that has arisen to address the ESA
5 regulatory framework and the OEB regulatory ratemaking
6 functions.

7 It is clear from a regulatory ratemaking perspective
8 that the LDC must assume ownership demarcation points are
9 static. LDCs' rate base doesn't change unless assets are
10 legally transferred into the regulated utility.

11 Having said that, I would like to direct the Board to
12 diagram number 5. Again, assume this is today, 2009. As
13 you heard from Mr. Cook, now we have a number of unmetered
14 scattered loads introduced into this diagram, a billboard,
15 a telephone booth, a TTC bus shelter, a decorative light, a
16 GFI outlet. These USL customers are all serviced from an
17 existing underground streetlighting circuit.

18 The net result, the streetlighting circuits are in
19 fact behaving as distribution circuits. Yet ownership was
20 never formally transferred to the LDC.

21 Moreover, the USL and streetlighting customers
22 received distribution service, but the LDC never paid for
23 those lines or those poles. So in the end, these assets
24 are not included in the rate base.

25 So essentially we focussed the Board on only one
26 example, on one boulevard of a complex system that has
27 evolved over the past 20-year period since the ownership of
28 the distribution and streetlighting systems were

1 unnaturally severed in 1989.

2 Although we've taken the Board through these diagrams
3 in chronological sequence, the reverse is -- can also be
4 true. In other words, diagram 5 could just as easily have
5 reflected the status quo in 1989. Diagram 1 could have
6 easily reflected the situation today. And diagram 3, for
7 all intents and purposes, could have reflected both 1989
8 and today.

9 So it is clear, the Board can only imagine the
10 exponential growth of permutations and combinations of
11 possible points of demarcation that have arisen across the
12 city in the past 20 years since ownership of the
13 distribution and streetlighting systems were unnaturally
14 bifurcated in 1989.

15 MR. RODGER: Thank you, Mr. LaPianta. Now turning to
16 you, Mr. Couillard, what effect, if any, would the proposed
17 transaction contemplated in this proceeding have on this
18 status quo situation?

19 MR. COUILLARD: Well, the proposed transaction we
20 believe will greatly simplify some of the issues that we
21 just showed you, especially around ESA jurisdiction and
22 around potential safety. We believe that, you know, by
23 declaring the streetlighting infrastructures as being a
24 distribution asset, everything would fall under the Ontario
25 Regulation 22/04, and would make it way easier for us to
26 manage and probably more efficient.

27 As explained by Mr. Cook and Mr. LaPianta, our crews,
28 they make pragmatic assumptions to ensure that the systems

1 remain safe at all times. However, because they are
2 managed by two different companies, it is not always easy
3 to understand what it is the other companies, the other
4 crews are doing, and therefore, although we do everything
5 to make the system safe, it might not be as safe as it
6 could be. And therefore we would think that by merging all
7 of these activities together, that it would improve safety
8 significantly.

9 The -- in addition to this, the proposed transaction
10 would resolve a lot of inefficiencies. I think we have
11 talked a couple of minutes, as Mr. Cook mentioned, you
12 know, if there is -- if there is a fault on the system and
13 it is a streetlighting that's not working, so usually the
14 streetlighting crew will get on the scene. And if they see
15 it is not really street light-related, then they will call
16 another crew, which will come on the regulated side and try
17 to fix the problem. And sometimes even the streetlighting
18 crew will have to come back, because based on the work that
19 has been done by the regulated folks, they might have to
20 reconnect the lights and do some work out there.

21 So we believe that we can leverage some efficiencies
22 at that level, but also on the administrative side. There
23 is administrative costs to run both companies. There is
24 confusion costs out there, is if you ask people on the
25 street -- the lights is off; it is Toronto Hydro -- they
26 don't really make the distinction between Toronto Hydro
27 Energy Services or Toronto Hydro Corporation.

28 The systems were built together 80-something years ago

1 and probably more than that. I think the -- the
2 application shows some instructive annual reports which has
3 been presented which are fairly old, highlighting the fact
4 that Toronto Hydro at first could argue that we were in the
5 business of actually lighting up this city.

6 So we believe that by reuniting those two systems, we
7 would be able to continue to leverage some of those
8 efficiencies in the future.

9 Finally, I think the number one goals for us is always
10 to ensure the safety of our employees and also the public,
11 and we believe that we would be better served if we were to
12 put these assets into one company.

13 MR. RODGER: And Mr. Couillard, just at the beginning
14 of your comments, you talk about if the transactions are
15 approved, then this whole infrastructure streetlighting,
16 the LDC fall under the O.Reg. 22-01. I take it that you
17 mean this would still be subject, then, to ESA approval,
18 but now it just applies under one set of rules rather than
19 two; is that right?

20 MR. COUILLARD: That's correct.

21 MR. RODGER: And finally, Mr. Sardana, could you
22 please describe the rate impacts resulting from the
23 proposed transaction?

24 MR. SARDANA: Yes. Thank you, Mr. Rodger, and good
25 morning, Panel.

26 Our modelling of the impact of the proposed
27 transaction on all of THESL's existing rate classes is
28 based on examining the revenue stream that we get from the

1 current services agreement with the City of Toronto, as
2 well as revenues that the streetlighting company enjoys
3 from other sources.

4 And we believe that on amalgamation, THESL or New
5 THESL will not change its billing practices to any rate
6 class, including USL and streetlighting.

7 If the transaction is approved, New THESL will
8 allocate all of the costs associated with the
9 streetlighting system directly to the streetlighting and
10 USL classes. In turn, these costs will be offset by the
11 revenues earned under the existing service agreement with
12 the city, and obviously revenue -- revenues from other
13 sources.

14 I think this is an important point to emphasize for
15 us. The revenue stream currently earned by TH Energy under
16 the existing service agreement with the city will be
17 transferred to New THESL with the assets, and then this
18 revenue stream will be used to offset the costs that we
19 allocate to those two classes.

20 As a result, we forecast that the revenue requirement
21 for USL and streetlighting combined will increase only
22 marginally by about two and a half percent. And it's our
23 evidence that the rates for other rate classes will not be
24 materially affected at all by this transaction.

25 MR. RODGER: Thank you, sir. That concludes my
26 examination-in-chief. The panel is available for cross-
27 examination, Mr. Chairman.

28 MR. KAISER: Thank you, Mr. Rodger. Mr. Blue?

1 **CROSS-EXAMINATION BY MR. BLUE:**

2 MR. BLUE: Mr. Chairman, Panel, I prepared a book of
3 exhibits that I want to use in my cross-examination so that
4 we don't have to reach to find different documents. I have
5 given copies to the Board, copies to the panel and I have
6 copies here for anyone else who wants them.

7 Perhaps we could just hand those up before I start.

8 MR. KAISER: Could we give this an exhibit number?

9 MS. COCHRANE: Mr. Chair, you should have those each
10 in front of you.

11 MR. KAISER: Yes, we have them.

12 MS. COCHRANE: And we will be marking that Exhibit
13 K1.3.

14 **EXHIBIT NO. K1.3: CITY OF TORONTO DOCUMENT BOOK**

15 MR. BLUE: Thank you, Mr. Chairman.

16 Mr. Sardana, could we start with the last point that
17 you made? And we can do that by turning to tab 1 of the
18 Exhibit K1.3, which are pages 22 and 23 of the application
19 for the distributor's licence to be issued to NewCo.

20 MR. SARDANA: I have that.

21 MR. BLUE: And there you make the same point, which is
22 that you don't expect other customer classes to experience
23 any burden as a result of this amalgamation and that all
24 costs attributable to the streetlighting class will be
25 allocated to them.

26 MR. SARDANA: That's correct.

27 MR. BLUE: Okay, sir.

28 Now, you quite understand that the city wanted to test

1 that, because that's a matter of the city's revenue. Do
2 you understand that?

3 MR. SARDANA: Yes, I do.

4 MR. BLUE: So could we turn to tab 2 of Exhibit K1.3?

5 MR. SARDANA: I have that up, sir.

6 MR. BLUE: You will see that is a table I sent to
7 Mr. Rodger, along with some backup information, on November
8 9th. Do you have that?

9 MR. SARDANA: Yes.

10 MR. BLUE: You saw that around November 9th, did you
11 not, sir?

12 MR. SARDANA: Yes, I did.

13 MR. BLUE: And Mr. Rodger wrote back to me on tab 3,
14 and paragraph 2 of -- that is his letter of November 12,
15 2009. Do you see that, sir?

16 MR. SARDANA: Yes, I do.

17 MR. BLUE: It says Toronto Hydro does not understand
18 nor is it appropriate for it to speculate upon what
19 assumptions Elenchus Research relied on in creating the
20 three hypothetical scenarios.

21 MR. SARDANA: I see that.

22 MR. BLUE: Is it really true you didn't understand
23 those scenarios?

24 MR. SARDANA: I think, you know, we should clarify.
25 Obviously the scenarios are fairly straightforward. What
26 we did not understand were the assumptions used.

27 For example, where did the \$1 dollars in OM&A,
28 incremental OM&A, come from? The net book value that was

1 used in coming up with these scenarios of \$10 million is
2 also just an assumption.

3 So it is really that, those numbers to which I was
4 referring.

5 MR. BLUE: Fine. That's what I thought. So, sir,
6 yesterday I sent the same tables with a different name to
7 Mr. Rodger, and he sent those off to you, again, did he,
8 sir?

9 MR. SARDANA: He did, yes.

10 MR. BLUE: Yes. It is fair to say that -- let's just
11 look at the table together.

12 Mr. Sardana, in the first field, scenario 1, what the
13 exercise done there is, has been, firstly, to increase a 40
14 percent revenue-to-cost ratio to 100 percent and calculate
15 what the resulting rate increase would be.

16 MR. SARDANA: Yes. I see what you have done, yes.

17 MR. BLUE: All right. Similarly, in the second and
18 third column, if you made an assumption that if there was
19 \$1 million of additional costs, then the effect on the rate
20 would be as shown.

21 MR. SARDANA: That's correct.

22 MR. BLUE: The scenario 2 is simply the same exercise,
23 except this time we assumed your 2010 rate case assumption
24 of the 70 percent revenue-to-cost ratio to see what the
25 rate would be.

26 MR. SARDANA: Correct.

27 MR. BLUE: And we again said, assuming there was
28 \$1 million of costs, then the resulting increase in rate

1 would be as shown at 1.21, assuming those numbers apply.

2 MR. SARDANA: That's right.

3 MR. BLUE: Similarly, the third scenario was to assume
4 -- to look at a jump from a 70 percent revenue-to-cost
5 ratio to a 100 percent revenue-to-cost ratio to see what
6 the rate would be.

7 MR. SARDANA: That's right.

8 MR. BLUE: Again, then, finally, we added the
9 \$1 million additional cost to see what the rate would be.

10 MR. SARDANA: Right.

11 MR. BLUE: So we both agree that there is a functional
12 relationship on the rate if the revenue-to-cost ratio
13 changes?

14 MR. SARDANA: Absolutely, Mr. Blue. I mean, I think
15 that is fairly obvious, in that if a rate class is far
16 below unity on its revenue-to-cost ratios, as it progresses
17 towards unity the rate for that class will go up. There is
18 no question there.

19 MR. BLUE: Right. Similarly, if the costs increase
20 annually, that is going to drive the rate up, as well?

21 MR. SARDANA: Sure.

22 MR. BLUE: Right. Now, sir, you said that you expect
23 the net effect on the streetlighting rate class, if this
24 amalgamation is approved, to be \$350,000; is that correct?

25 MR. SARDANA: That's our evidence right now, yes.

26 MR. BLUE: Right. And, sir, what we were just having
27 trouble with is reconciling that number and understanding
28 how you arrived at it.

1 Do I understand, firstly, that the plan is to add
2 \$62.5 million additional rate base?

3 MR. SARDANA: That's the -- we anticipate that to be
4 the net book value that will be added to rate base.

5 MR. BLUE: And the cost of capital on that would be
6 approximately \$3,995,000?

7 MR. SARDANA: Subject to check. Our numbers show that
8 the return -- yes, that's fine.

9 MR. BLUE: Okay. And you are going to transfer some
10 33 employees; is that correct?

11 MR. SARDANA: Yes.

12 MR. BLUE: And the cost of that, as I understand it
13 from your IR response, the total package of compensation
14 for them would be about \$3.57 million?

15 MR. SARDANA: Again, subject to check, that sounds
16 about right.

17 MR. BLUE: And depreciation on that additional rate
18 base would be about 2.5 million a year?

19 MR. SARDANA: Our numbers are showing a little bit
20 higher than that. Perhaps I can simplify it for you what
21 our numbers are showing.

22 MR. BLUE: Yes.

23 MR. SARDANA: We're showing depreciation of
24 5.1 million, revenues from this transaction of just over
25 17 million, working capital of about 750,000. The return
26 that we've come up with is about 4.3 million. PILs is
27 about 2 million.

28 So when you add up all of those things, you come up

1 with a revenue requirement of around 17.4 million.

2 MR. BLUE: Right.

3 MR. SARDANA: Which is then offset by a revenue of
4 just over 17 million, for a net impact of \$350,000.

5 MR. BLUE: So part of that revenue is the 13.6 million
6 you get from the city under the streetlighting agreement?

7 MR. SARDANA: It is slightly more than that now,
8 because of regular increases.

9 MR. BLUE: All right. Thank you.

10 Now, sir, let's go back to tab 1 of Exhibit K1.3.

11 MR. SARDANA: Okay.

12 MR. BLUE: Just as a reference point, you say there
13 that any revenues generated from those assets, including
14 the 13.6 annual service fee from the services agreement
15 with the city, will be applied as revenue offset and
16 potential rate increases for the class of customer.

17 MR. SARDANA: That's correct.

18 MR. BLUE: And we agree, don't we, that the
19 streetlighting expressway service agreement is between the
20 City of Toronto and THESI?

21 MR. SARDANA: It is, yes.

22 MR. BLUE: Right. And if you transfer -- if your
23 application is approved in the form you want it, THESI will
24 have -- THESI will not be providing any streetlighting
25 service to the City of Toronto?

26 MR. SARDANA: TH Energy will not, yes.

27 MR. BLUE: Right. So how does the money that the City
28 of Toronto pays under this agreement, which it is no longer

1 providing service for, get into New THESL, and then into
2 the distribution rate class?

3 MR. SARDANA: Well, I think we have -- as we have
4 stated in our application, a condition precedent --

5 MR. BLUE: Sorry. Streetlighting rate class.

6 MR. SARDANA: Pardon me?

7 MR. BLUE: I'm sorry, I misspoke. The question,
8 again, is: How does the money get from the City of Toronto
9 to THESI, from THESI to New THESL, and from you the New
10 THESL into the streetlighting rate class?

11 MR. SARDANA: Well, okay. Let's just take it down to
12 the bare bones. There will be an assignment of the
13 contract to New THESL under this -- if this transaction is
14 approved. That's part of the overall process of getting
15 this approval.

16 MR. BLUE: Right.

17 MR. SARDANA: And that would then lead to the City of
18 Toronto paying for the -- under the existing agreement,
19 moneys to New THESL now.

20 MR. KAISER: Does the city have to consent to that
21 assignment?

22 MR. SARDANA: I don't believe so.

23 MR. BLUE: We will address that in argument. Go
24 ahead, sir.

25 MR. SARDANA: So I believe I have answered your
26 question. That is how the monies would then get
27 transferred to New THESL.

28 MR. BLUE: Excuse me. How does it go directly from

1 there to the streetlighting class?

2 MR. SARDANA: Obviously, there would have to be at
3 some point a cost of service application submitted to the
4 OEB for review and approval.

5 We would then take the Board and intervenors through
6 that transaction. As you know, this is not a cost-of-
7 service application.

8 Once we do that, we will then establish rates for that
9 class, and within that examination, the revenue stream from
10 the city would then be used as a revenue offset for the
11 costs assigned to that rate class, and I should add to the
12 USL class as well.

13 MR. BLUE: Fair enough. So -- but in answer to my
14 question today, should we note the answer is you haven't
15 worked that out yet?

16 MR. SARDANA: We have worked out the numbers at a
17 preliminary level. We have not done a detailed cost-of-
18 service examination of the numbers, but the -- our models
19 are such that we don't believe a detailed cost-of-service
20 examination will lead to a significant change from what
21 we've got today.

22 MR. BLUE: Thank you, sir.

23 And so you're saying it would need subsequent
24 regulatory approval?

25 MR. SARDANA: Yes, that's right.

26 MR. BLUE: All right. Thank you.

27 Mr. LaPianta, could we show just show up slide 5
28 again? Just for clarity, sir, if the application is

1 approved, the Bell telephone booth would not be part of the
2 distribution company, would it?

3 MR. LaPIANTA: No, it would not.

4 MR. BLUE: Nor would the TTC bus shelter?

5 MR. LaPIANTA: No, it would not.

6 MR. BLUE: Nor would the street lights?

7 MR. LaPIANTA: The --

8 MR. BLUE: Not the street lights, but the -- I'm
9 sorry, the -- the traffic lights.

10 MR. LaPIANTA: No, they would not.

11 MR. BLUE: Thank you. Just a second.

12 MS. CHAPLIN: Sorry, if I could just interrupt,
13 Mr. LaPianta, can -- you know, you have shown billboards
14 and seasonal decorations being connected to these light
15 standards. Could those same connections be made via the
16 Bell telephone booth and the TTC shelter? Like, is it
17 possible this issue will also arise in respect of those
18 assets?

19 MR. LaPIANTA: I am not certain I understand the
20 question. You are asking me if the Bell telephone booth
21 could be serviced from the street light pole as we have
22 serviced the billboard?

23 MS. CHAPLIN: No, no, no. I'm sorry. I'm sorry.
24 Could someone come along and seek to connect a billboard to
25 the Bell telephone booth or to the TTC shelter? In other
26 words, the connections that you are showing of these
27 unmetered scattered loads to the light standards, could
28 those -- could similar connections be made to these

1 remaining entities like the TTC bus shelter and the Bell
2 telephone booth?

3 MR. LaPIANTA: No, they could not.

4 MS. CHAPLIN: Okay, thanks. Sorry, Mr. Blue.

5 MR. BLUE: Mr. Sardana, just one -- one question.
6 When we looked at the numbers, you said that you had
7 approximately \$17 million in revenues, and part of that we
8 talked about, which is the streetlighting agreement
9 revenues. So there is -- there is some amount of
10 additional revenue as well?

11 MR. SARDANA: That's correct.

12 MR. BLUE: All right. Does streetlighting generate
13 any revenues except under the service agreement and through
14 distribution rates, then?

15 MR. SARDANA: Not through distribution rates. There
16 are other entities that connect to the streetlighting
17 system. For example, the Police Board uses some of the
18 lights for its purposes, et cetera, and they pay a revenue
19 stream.

20 MR. BLUE: Are there details of that, those sources of
21 revenue in the application?

22 MR. SARDANA: It is not in the application, no.

23 MR. BLUE: Would it be difficult to just do a little
24 return showing us what those revenues are and how they're
25 broken down?

26 MR. SARDANA: We can take an undertaking to provide
27 that.

28 MR. BLUE: Thank you very much.

1 Thank you, Mr. Chairman. Thank you, panel. Those are
2 my questions.

3 MS. COCHRANE: Just for the record, that will be
4 Undertaking J1.1, and can we just put on the record what
5 the undertaking was? Mr. Blue, what -- sorry, what was the
6 undertaking you are seeking?

7 MR. BLUE: I'm seeking an undertaking of the breakdown
8 of additional revenues for the streetlighting class that
9 are not generated by distribution rates or under the THESI
10 and City of Toronto Service Agreement.

11 MS. COCHRANE: Thank you.

12 **UNDERTAKING NO. J1.1: TO PROVIDE A BREAKDOWN OF**
13 **ADDITIONAL REVENUES FOR THE STREETLIGHTING CLASS THAT**
14 **ARE NOT GENERATED BY DISTRIBUTION RATES OR UNDER THE**
15 **THESI AND CITY OF TORONTO SERVICE AGREEMENT**

16 MR. KAISER: Mr. Faye?

17 **CROSS-EXAMINATION BY MR. FAYE:**

18 MR. FAYE: Thank you, Mr. Chair.

19 Panel, my name is Peter Faye. I will be asking
20 questions on behalf of Energy Probe.

21 And just one preliminary question. I understood that
22 Mr. Sardana introduced himself as an employee of Toronto
23 Hydro-Electric System Limited, and his CV appears to show
24 that you are an employee of Toronto Hydro Corporation.
25 Could you clarify that?

26 MR. SARDANA: I am currently employed by THESL, the
27 distribution company. That must have been an old CV; we
28 will have that corrected. But I am officially part of

1 THESL.

2 MR. FAYE: All right. Thanks. Before I get into the
3 cross-examination I prepared, I think it might be prudent
4 or fruitful to just follow up on some of the things that
5 have already been testified to. And it will probably
6 eliminate some of the questions I was going to ask.

7 On drawing 2 of Exhibit F1.2, I think I heard either
8 Mr. Cook or Mr. LaPianta say that when that red line gets
9 extended from the LDC chamber, because there is an
10 unmetered scattered load introduced, that the ownership of
11 the secondary conductor doesn't change. It remains with
12 Toronto Hydro Energy Services. Is that right?

13 MR. COOK: That's correct.

14 MR. FAYE: Is there any reason why the ownership
15 couldn't change?

16 MR. COOK: We have limitations as far as transacting
17 components of the asset in relation to the Asset Purchase
18 Agreement.

19 MR. FAYE: That was sort of too complicated for me to
20 understand. Could you simplify that answer a little?

21 MR. LaPIANTA: Mr. Faye, I think, again, it goes to
22 the practicality of -- of the issue.

23 Clearly, if we could -- if we could somehow create a
24 process by which the legalities of that could be done on a
25 daily basis, and that could be done, the reality is we have
26 hundreds if not thousands of these things occurring
27 annually. And to do so, I think, would just defeat the
28 purpose of -- of the entire exercise. This happens on a --

1 on a daily basis, if not multiple times during the day, and
2 I think the practicality doesn't warrant it.

3 MR. FAYE: But there is nothing regulatorily that
4 would impede that you could make a contract with Toronto
5 Hydro Energy Services to say: Well, we have a request from
6 Bell to service a new Bell telephone booth, and that means
7 that from the LDC chamber to the Bell booth, those
8 conductors are now ours. Identify them. You know, tag
9 them. Whatever you like. Update your records, and then
10 both parties now know that that is a THESL asset, not a
11 THESI asset. There is no regulatory impediment to that, is
12 there?

13 MR. COUILLARD: Sorry. I am making sure the mic is
14 on.

15 Well, Mr. Faye, I think I will agree with you there is
16 probably not a regulatory, per se, impediment to doing so.
17 I think there is -- there could be a legal issue here in
18 relation to our Asset Purchase Agreement with the city,
19 where the only thing that we have that is transferable as
20 far as asset is poles.

21 And I think to that effect, I mean I think the overall
22 issue is more a question of practicality, is how you go and
23 then start tagging those and transferring the asset, at
24 what price, what type of agreement. And I think it would
25 become very cumbersome to try to keep track of all of
26 those, and what if a phone booth is being removed. As we
27 all know, there is not as many of those around. So are the
28 assets going back to the Energy Services?

1 So I mean I understand the point you are making. I
2 think I will agree with you saying there is no regulatory
3 framework, although I think there is a legal framework and
4 if we consider the agreement we had when we purchased the
5 asset. But I think there is huge impracticality of doing
6 such things.

7 MR. RODGER: Then perhaps -- perhaps I could add,
8 Mr. Faye, since there is a legal components of this
9 question, that under section 86.1(b), and (a) for that
10 matter, of the OEB Act, which is why we are here today,
11 there is a requirement to get OEB approval to sell, lease
12 or otherwise dispose of that part of a distribution system
13 that is necessary in serving the public. So you may have
14 to go through one of these types of applications for every
15 type of transaction that -- that was contemplated in the
16 answer.

17 MR. FAYE: Thanks for that clarification.

18 I think I -- if I understood you right, "sell, lease
19 or otherwise dispose of" would be the Toronto Hydro-
20 Electric System, THESL, disposing of something, the Board
21 would have to approve that. But THESL -- THESL acquiring
22 something, the Board doesn't have to approve that, do they?

23 MR. RODGER: Well, the point is -- I think our point
24 in this application is that streetlighting is
25 distribution. Therefore it could not be transferred
26 without the OEB's approval.

27 MR. FAYE: Okay. I will think about that.

28 One of the other issues that you spoke about on

1 drawing 2 was the complications with the Electrical Safety
2 Authority. And I just want to make sure I clearly
3 understand.

4 Where it says O.Reg. 22/04, that is a regulation that
5 does what? What obligations does that impose on the
6 distributor?

7 MR. LaPIANTA: Ontario Regulation 22/04 essentially
8 allows a utility a self-governing ability under the
9 Electrical Safety Code.

10 In other words, the Electrical Safety Authority would
11 ensure that the utility install and maintain its equipment
12 pursuant to its own standards, but doesn't necessarily have
13 privy of control over the content of that standard.

14 So, for example, on an annual basis right now, Toronto
15 Hydro is audited by -- we conduct our own audits, and,
16 provided that we can demonstrate that we maintain or build
17 to our own standards, we continue to retain our self-
18 auditing authority.

19 MR. FAYE: Okay. And where I see the word "code",
20 from there on, that is the Electrical Safety Code, I take
21 it?

22 MR. LaPIANTA: That's correct.

23 MR. FAYE: And that is why the ESA comes out and
24 inspects things and checks to see if they comply. But in
25 cases where the distributor builds its own plant, you don't
26 call the ESA to come out and look at anything; is that
27 right?

28 MR. LaPIANTA: The ESA -- when Toronto Hydro or when

1 THESL connects a new customer, be it a condominium, an
2 apartment building, the ESA actually comes to the site and
3 inspects the customer component of the premises prior to
4 energization.

5 MR. FAYE: That would be the part that analogously
6 would be Code in this diagram?

7 MR. LaPIANTA: That's correct.

8 MR. FAYE: Not 22/04?

9 MR. LaPIANTA: That's correct.

10 MR. FAYE: Okay, I understand. Thank you.

11 Now, one of the issues was this Code-compliant
12 connector thing, that where the utility has used its Code -
13 - its standard connector, it may not be the connector that
14 is approved in the Electrical Safety Code. Did I get that
15 right?

16 MR. LaPIANTA: That's correct.

17 MR. FAYE: But the utility, for simplicity's sake and
18 to avoid confusion with its affiliate, could use the
19 connector that is specified in the Electrical Safety Code.
20 There is no prohibition on that, is there?

21 MR. LaPIANTA: In practicality, yes, we could use it.

22 MR. FAYE: Would that simplify things, if you all used
23 the same connectors?

24 MR. LaPIANTA: Not necessarily, no.

25 MR. FAYE: Why do you say that?

26 MR. LaPIANTA: Well, I think for the sake of -- for
27 the sake of moving to a harmonized connector would, in fact
28 -- when in fact -- it would like saying you have to replace

1 all of the existing connectors. The reality is the
2 connectors that are used now, the legacy standards that are
3 used now by the utility are in fact providing an integral
4 connection point. The point is safe and it provides a
5 service.

6 To have to replace that for the sake of going to a new
7 standard just to harmonize the two connectors, it
8 economically doesn't make a lot of sense.

9 MR. FAYE: So rebuilding the entire system to this new
10 standard -- I can understand your reluctance to say that is
11 very efficient, but if you were to adopt the new standard
12 now, you would have lots of legacy installations on other
13 parts of the system that aren't your present standard, I
14 would think. Is that so?

15 MR. LaPIANTA: In terms of -- in terms of referring to
16 the contents of the handwell --

17 MR. FAYE: No, just anywhere on your distribution
18 system. You would have things that were in there for 30
19 years that aren't necessarily the standard you use now.

20 MR. LaPIANTA: That's correct.

21 MR. FAYE: And you would remove them as time and
22 efficient operation permits; right?

23 MR. LaPIANTA: Yes, that's correct.

24 MR. FAYE: So could the same principle be applied
25 here? You adopt a new standard. You don't go out and do a
26 wholesale changeover, but as the years go by and components
27 get replaced, the new component becomes more prevalent?

28 MR. LaPIANTA: Absolutely.

1 MR. FAYE: Okay. In your rehabilitation of the
2 handwells after the level III emergency, do you now use
3 this gel cap connector?

4 MR. LaPIANTA: We have used them extensively during
5 the level III remediation. We are not convinced it is
6 perhaps the best application for this connector, given its
7 operating environment, so we haven't landed on what the new
8 standard will be. It is still in the process of
9 development. We are working actively with the ESA to come
10 up with a standard that we can both be satisfied is going
11 to mitigate what otherwise we saw in February.

12 MR. FAYE: Okay. So if you like your own standard
13 better than the gel cap, why are you using the gel cap if
14 you don't have to?

15 MR. LaPIANTA: Well, it is not a matter of liking our
16 own standard more than the gel cap. The reality is, during
17 the level III emergency in February, we had about 28 days
18 to scan the entire city and make a fix.

19 Applying a gel cap connector is much, much more
20 economically efficient and less time consuming than taking
21 apart the entire handwell, restripping all the connectors
22 and reapplying a split bolt with scotch tape, and so on and
23 so forth.

24 So at that time, it was a quick fix that would
25 otherwise eliminate the safety hazard that we were trying
26 to eliminate.

27 MR. FAYE: Okay. So before I leave that specific
28 subject, just to recap, if you were to use the same

1 connector that Toronto Hydro Energy Services is required to
2 use by the ESA, this would eliminate this confusion problem
3 when the ESA goes to inspect the hand hole and finds out --
4 or handwell, and finds out that there is this different
5 connector.

6 If it was the same connector, there would be no
7 confusion on that matter, would there?

8 MR. LaPIANTA: Absolutely. Assuming we could agree on
9 a connector that served our operational purposes, as well
10 as that of THESI, yes, that's true.

11 MR. FAYE: Okay. Could you flip up drawing 5 now?

12 This has a lot of interesting things on it. The first
13 thing I would like to ask you about is the billboard that
14 is attached to the street light standard.

15 I'm assuming the same situation applies to the sort of
16 mechanical components here. When that becomes a
17 distribution path, you didn't assume ownership of the
18 street light standard. It still resides with THESI; right?

19 MR. LaPIANTA: That's correct.

20 MR. FAYE: Okay.

21 Not anyone can go out and attach a billboard, though;
22 is that right? Mr. Cook I guess would be the best to
23 answer that question.

24 MR. COOK: Not anyone, sir? That's correct.

25 MR. FAYE: So what is the process for someone to get
26 permission to put a billboard on your light standard?

27 MR. COOK: The initial contact by the customer would
28 be to THESL, and THESL would identify that as being the

1 most efficient, cost-effective connection point. These are
2 primarily in areas, what you see here, where THESL has no
3 other assets in order to connect the customer.

4 MR. FAYE: Okay. Just so I have a visual image of
5 this, what kind of billboards are we talking about here?

6 MR. COOK: Pattison signs with would be one example.

7 MR. FAYE: Okay, I get that. Pattison signs are
8 normally on trailers, the ones I have seen. They're not
9 sitting on the top of poles, are they?

10 MR. COOK: This isn't reflecting the top of the pole.
11 It could be construed perhaps as that, but it is supposed
12 to be a ground level -- those two parallel lines coming
13 down from the billboard would be attached to the ground.

14 MR. FAYE: Okay. Pardon me, I misunderstood what I
15 was looking at.

16 So then if I understand this drawing right, the
17 service comes up the pole, and then splits off and
18 something feeds that light, and another chunk of conductor
19 goes over and feeds the billboard; is that right?

20 MR. COOK: Yes. The conductor would come up the
21 pole. The pole would be like a raceway for that
22 connection. Then the connection would be made at the top
23 of the pole close to what we call the heel plate, where
24 there is exposed wires for that connection to be made to
25 the billboard.

26 MR. FAYE: Okay. And is there any reason why that
27 connection can't be made at that little hand hole down at
28 the bottom of the pole?

1 MR. COOK: You're referring to the square hole that is
2 in about three-quarters of the way down?

3 MR. FAYE: Yes.

4 MR. LaPIANTA: Mr. Faye, do you have it up on your
5 screen?

6 MR. FAYE: I do.

7 MR. LaPIANTA: Is it this hand hole you're referring
8 to or the LDC chamber?

9 MR. FAYE: No, the one actually in the street light
10 pole itself. I think that little square --

11 MR. LaPIANTA: Oh, the connection here?

12 MR. FAYE: Is that a hand hole?

13 MR. LaPIANTA: That is a hand hole. Are you referring
14 to the hand hole or the handwell?

15 MR. FAYE: I'm referring to the hand hole.

16 MR. LaPIANTA: The hand hole.

17 MR. FAYE: Let me be a little clearer with that
18 question.

19 You could run a piece of conductor from the billboard
20 down the pole and into that hand hole and make your
21 connection there; is that right?

22 MR. COOK: That's correct.

23 MR. FAYE: Okay. Let's take it one step further. You
24 could take the wire down the pole through the hand hole and
25 into the handwell and make the connection there; is that
26 right?

27 MR. COOK: Depending on the capacity of the
28 underground infrastructure that is there, whether we would

1 be able to go two wires through the same duct.

2 MR. FAYE: And if you couldn't, could you put another
3 duct in there?

4 MR. COOK: Yes, we could.

5 MR. FAYE: Okay. So it is possible to eliminate the
6 pole from consideration, at least in this circumstance,
7 that it doesn't become a distribution conduit. You could
8 connect so that in the handwell, there is a connection for
9 the street light and there is connection for your
10 billboard, just as you have done the Bell telephone booth.
11 You could do it down in the handwell; right?

12 MR. COOK: It would increase the costs significantly,
13 but still require the pole to be a raceway to bring that
14 conductor up to make that connection at the top of the pole
15 where the hill plate is.

16 MR. FAYE: Okay. So -- but it is technically
17 feasible, and just to offset the cost argument, you do
18 recover your costs of this kind of installation from the
19 customer who wants the billboard, I am assuming? Your
20 ratepayers aren't supporting that activity, are they?

21 MR. COOK: I do not... yes, the cost is recovered.

22 MR. FAYE: Okay. All right. Can we -- can we move
23 on, then, to the subject you have just brought up? And
24 that is using that pole, that is someone else's pole. Even
25 if it is just a wire hanging down the centre of it, that --
26 that needs to be negotiated, right?

27 MR. COOK: That's correct.

28 MR. FAYE: Okay. So if the connection is made at the

1 handwell and all that is going up that pole is a piece of
2 conductor feeding the billboard, is there any reason why
3 the billboard owner can't make a deal with Toronto Hydro
4 Energy Services to rent space in his pole?

5 MR. LaPIANTA: Again, sure, practically that is
6 possible. Whether it is -- it makes sense in practicality
7 or to be able to do that for the - for the vast -- the vast
8 USL class is another -- is another issue, I think.

9 MR. FAYE: Yeah. I will grant you there could be
10 practical considerations that would have to be worked out.
11 But in principle, there is nothing wrong with this whole
12 concept of doing all of your connections down at that
13 handwell level, and keep the light standard as something
14 separate.

15 Okay. So if we move down now to the seasonal
16 decoration, do the same principles apply there? Is this a
17 situation where you could rent space from THESI for your
18 ground fault interrupter outlet, and rent space from THESI
19 for the attachment to the pole, but make the GFI live from
20 the handwell and in the sidewalk there?

21 MR. COUILLARD: I think, Mr. Faye, we would agree with
22 you on that.

23 Again, I think we can come up with a whole slew of --
24 of potential other ways to do that. We can run a whole
25 secondary on the LDC and directly connect all those items
26 to the distribution system, but we don't believe this would
27 be efficient.

28 We believe that, you know, the costs that we would

1 have to -- the customer would have to incur on that would
2 be quite high, and therefore it is way more efficient to
3 leverage the streetlighting asset, as these assets were
4 built, you know, mainly at the same time and -- and for the
5 sole purpose of being used as distribution assets for about
6 80 years. So we would agree with you. We will concede
7 that.

8 You can find a lot of different ways to connect these
9 assets and maybe reduce the amount of streetlighting or --
10 or find other permutations where streetlighting would maybe
11 get into an agreement with the customers a -- for use of a
12 portion of their assets.

13 But I think overall we believe that the more efficient
14 way is to merge these assets together.

15 MR. FAYE: Yeah, and I certainly wasn't suggesting
16 that you rebuild a completely parallel secondary system. I
17 think I was only suggesting that you make the best use of
18 the assets that are there, but don't introduce
19 complications.

20 I guess where I am going with this is -- is an
21 alternative to your application to assume ownership of the
22 streetlighting cable as part of your distribution network,
23 but why do you need to own the light standards and the
24 luminaires? Why not leave that with THESI?

25 MR. SARDANA: I think, Mr. Faye, just to add to what
26 Mr. Couillard has just mentioned, it just becomes a matter
27 of inefficiency to leave a small piece behind, in terms of
28 administration, et cetera. It just makes more sense to

1 have it all at once system.

2 Sure, you could construe a scenario where you say:

3 Okay, fine, we will leave the luminaires behind and, you
4 know, the rest is distribution, but to what end? It just
5 introduces one more level of inefficiency into the system,
6 which is really where we're going with this.

7 We are proposing that the system isn't as safe today
8 as it could be, and we can make it safer by folding it all
9 in. It could be more efficient by folding it all in. And
10 let's not introduce an artificial inefficiency by leaving
11 behind a piece that perhaps doesn't need to be left behind.

12 MR. FAYE: Okay. Maybe I will just follow that
13 thought a little bit. You don't presume to -- you are not
14 applying to take over the Bell system booths? No?

15 MR. SARDANA: No, we are not.

16 MR. FAYE: You are not applying for TTC bus shelters
17 or seasonal decorations or billboards; traffic lights, I
18 think we saw on another slide. All of those are going to
19 stay separate. Those are loads, right?

20 MR. SARDANA: Those are loads, Mr. Faye, and the other
21 distinction, of course, is we didn't build -- build that
22 part of the system. That is not part of our system.

23 The streetlighting system was at one point part of the
24 distribution system. And my engineering colleagues will
25 attest that even the luminaires and the arm that holds the
26 luminaires was really -- it is a matter of design that has
27 to go along with, you know, the boulevard design that is
28 all put in at the same time.

1 So yes, that is the distinction between bus shelters
2 and Bell phone booths, et cetera. They're not part of our
3 system.

4 MR. FAYE: Okay. One last question on this drawing
5 and then I can move on to my regular stuff.

6 Does THESI receive revenue for attachments to their
7 poles?

8 MR. COUILLARD: THESI receives revenues for attachment
9 to the poles from -- for some attachments, not all. In
10 this particular case, for example, on the billboard or on
11 the seasonal decoration, there is no revenue that is
12 received from -- by THESI.

13 The cases are -- there's one contract with Cogeco
14 Cable for attachment, and there is contracts, I think, with
15 the police for -- for some attachment for some cameras that
16 THESI is getting some revenue as part of the \$17 million
17 revenues that we took an undertaking to provide for this
18 proceeding.

19 MR. FAYE: And -- and if -- if the Board approves your
20 application here and all of these assets move over to
21 THESL, would you contemplate starting to charge people to
22 use your poles?

23 MR. COUILLARD: Well, I think we would probably use
24 the same type of charge that the LDC has to charge Bell or
25 Rogers to use their poles. Yes.

26 MR. FAYE: A joint-use charge?

27 MR. COUILLARD: Yes.

28 MR. FAYE: That is a fairly well established system,

1 isn't it?

2 MR. COUILLARD: \$22 a pole, if I can remember.

3 MR. FAYE: Mr. Chair, I think I've finished my follow-
4 up questions to their introductory evidence, and if you
5 would like to take a break, now would be a convenient time.

6 MR. KAISER: All right. We will do that. Thank you,
7 Mr. Faye. Fifteen minutes.

8 --- Recess taken at 10:54 a.m.

9 --- Upon resuming at 11:15 a.m.

10 MR. KAISER: Please be seated. Mr. Faye.

11 MR. FAYE: Thank you, Mr. Chair.

12 Panel, before the break, we were going through some of
13 the -- I guess you would call them technical aspects or
14 engineering aspects of the reasoning behind the
15 application.

16 And since we started on that subject, perhaps I will
17 ask you to turn up Energy Probe's IR No. 6. That would be
18 at schedule F, tab 19, schedule 16, and we will continue
19 along the technical side of it before I move into the
20 financial.

21 MR. RODGER: May I have the reference again, Mr. Faye,
22 please?

23 MR. FAYE: I said schedule -- section F, tab 19,
24 schedule 16. Have you got that, Panel? Could I also ask
25 you to have handy Mr. LaPianta's affidavit? And that would
26 be schedule B, I think, tab 6. I think we will be
27 referring to that affidavit during these series of
28 questions.

1 So in that IR No. 16, if you are ready, we proposed
2 that much of the concentration of this application has been
3 the result of the level III emergency, and that was, at
4 least to our understanding, largely confined to an
5 underground problem.

6 And we asked you whether the affidavit related to
7 underground secondary, since it references underground a
8 lot, refers only to underground. Your response to that was
9 that, no, you have had some contact voltage problems on the
10 overhead infrastructure and that some of the complications
11 of demarcation also apply to the overhead.

12 I would like to start with just the overhead section
13 and see if I can understand, first, the demarcation issues
14 there.

15 I don't know if you have a comparable drawing to what
16 you had up on the screen, but if we could visualize, say,
17 drawing number 1 and just visualize the underground
18 conductor being attached to a bunch of poles instead of
19 being underground, the LDC chamber in that case, then, I
20 presume becomes a transformer that is attached to a pole.
21 Would that be fair?

22 MR. LaPIANTA: Yes.

23 MR. FAYE: Okay. And would it be fair to say that on
24 overhead-fed street lights, the poles are predominantly
25 owned by the Hydro-Electric System Ltd., not the Energy
26 Services company?

27 MR. LaPIANTA: If -- it is a combination of the two.
28 There are exclusively -- there are exclusive street light

1 poles, but I believe the percentage is in favour of the
2 Toronto Hydro poles holding a luminaire.

3 MR. FAYE: Okay. And the reason that there would be
4 separate ones, could you elaborate why there would be two
5 poles on a street that had an overhead line on it, two
6 streetlighting poles?

7 MR. LaPIANTA: There wouldn't be. I am not sure where
8 that --

9 MR. FAYE: So in the case where there would be a
10 separate streetlighting pole, it might be across the street
11 from where the distribution line is, because the luminaire
12 on that side of the street wouldn't be able to cast the
13 right light pattern. Would that be a circumstance where
14 you would have a dedicated street light pole not part of
15 the distribution system?

16 MR. COOK: That's correct. The infrastructure was
17 primarily determined on the width of the roadway. One side
18 of the road would be distribution, and, during the time
19 that the LDCs owned the asset, the other side would be more
20 aligned to streetlighting functionality.

21 MR. FAYE: Okay. But I understood Mr. LaPianta to say
22 that the predominant ownership of the pole was -- on which
23 the street light is mounted is the distribution company in
24 the overhead scenario; right?

25 MR. COOK: That's correct.

26 MR. FAYE: Okay. So if we could follow along that
27 thought, given our discussion of the demarcation problems
28 for underground, I wonder if you could just give us a brief

1 synopsis of what the comparable demarcation problems are on
2 overhead?

3 MR. COOK: We might be better served to look at
4 diagram 6. That actually does show an overhead conductor.

5 MR. FAYE: Okay.

6 MR. COOK: It's primarily the same issue that we have,
7 is that if that's -- let's suppose that that was -- that
8 red line we're identifying at the top of the pole would be
9 a streetlighting conductor. The same issue applies where
10 we would now have a traffic signal at the end of the line
11 that requires power, so not feeding from the bottom, you
12 know, underground circuit any longer, but fed overhead.
13 The same situation would apply.

14 If the only conductor in the area belonged to the
15 streetlighting company, that type of connection would
16 occur.

17 MR. FAYE: Okay. But in the usual course of things,
18 where there is an overhead line, would we expect that the
19 secondary circuit would be a distribution circuit in most
20 cases and not a streetlighting circuit?

21 MR. COOK: There are dedicated streetlighting
22 circuits, and, by nature, when they transition to supplying
23 service to USL - that was part of the discussion we had
24 earlier this morning - that's when our position is that
25 they transition to distribution. But there are circuits
26 out there that are overhead that are streetlighting
27 circuits.

28 MR. FAYE: And are they attached to THESL's poles or

1 are they on THESI poles?

2 MR. COOK: There are on THESI poles.

3 MR. FAYE: So this is a situation where you have an
4 overhead line on one side of the street, and, along that
5 line, you have a number of brackets and luminaires mounted
6 for streetlighting, and those are fed off a secondary
7 conductor that is owned by THESL?

8 MR. COOK: In some cases, that's correct.

9 MR. FAYE: Okay. Then the other case, predominantly
10 the other case, is where you have the distribution line on
11 one side of the road and no distribution line on the other
12 side, but you still need to light the other side, so you
13 have these stand-alone light standards, and you would have
14 a secondary conductor attached to that.

15 And is that the one that you're talking about being
16 the streetlighting cable?

17 MR. COOK: That's correct.

18 MR. FAYE: Okay. So, now, picture we're coming up to
19 an intersection here and there is going to be some traffic
20 signals. I would think, in most cases, the distribution
21 circuit goes to the intersection. Would that be fair?

22 MR. COOK: In most cases, that's correct.

23 MR. FAYE: And in that case, would the traffic signals
24 be fed from the distribution secondary?

25 MR. COOK: If available, yes.

26 MR. FAYE: Okay. So it is where the distribution
27 secondary doesn't get to the corner that it is more
28 efficient to use the streetlighting conductor to service

1 that?

2 MR. COOK: That's correct.

3 MR. FAYE: Okay. So in cases where the latter occurs
4 -- and let me repeat that, because it can be confusing.
5 This is a situation where there is a distribution overhead
6 line on one side of the street. On the other side, there
7 is no distribution line, but you need streetlighting
8 poles. And when you get to the corner, the streetlighting
9 pole was closer or more convenient or more efficient to use
10 -- to use for the traffic signal, and so you have this
11 conductor that you're saying now is essentially a
12 distribution conductor, because it's got an unmetered
13 scattered load on the end of it; is that fair?

14 MR. COOK: That's correct.

15 MR. FAYE: Okay. Let me propose to you the same
16 proposition I made before.

17 If Toronto Hydro-Electric System owned that
18 streetlighting conductor strung on the streetlighting
19 poles, that would solve the problem. There would be no
20 confusion about who owned what, but there would be no need
21 to transfer the pole and luminaire to them?

22 MR. COOK: I believe it is our position that that
23 pole, then, transfers from streetlighting primary function
24 into supporting that secondary line and, therefore, being
25 part of the distribution system.

26 MR. FAYE: Oh, yes, I can accept that. But I will ask
27 Mr. LaPianta. Do you have cases in the city where you
28 don't own poles that your distribution network is on?

1 MR. LaPIANTA: Yes, we do.

2 MR. FAYE: Would they be Bell telephone poles,
3 largely?

4 MR. LaPIANTA: One example, yes.

5 MR. FAYE: Would there be other examples?

6 MR. LaPIANTA: TTC.

7 MR. FAYE: TTC. So this would just be a third of at
8 least three examples where you are on poles you don't own.
9 And so you -- you have some joint-use arrangements with
10 those parties, right?

11 MR. LaPIANTA: Yes.

12 MR. FAYE: So nothing unusual about that. There would
13 be -- there is no technical or regulatory reason why THESL
14 couldn't rent space on THESI streetlight poles?

15 MR. LaPIANTA: I am not aware of any technical or
16 regulatory reasons. In practicality, yes, it is possible,
17 as we do in TTC, as we do in Bell.

18 MR. FAYE: Okay. Are there other demarcation
19 scenarios, other than the one we have just gone through,
20 that -- that occur on the overhead that -- that we haven't
21 discussed?

22 MR. LaPIANTA: I'm sorry, Mr. Faye. Could you repeat
23 that?

24 MR. FAYE: Well, there were a number of demarcation
25 problems on the underground. One was if you look in a
26 handwell, you don't know whose is what. One was sometimes
27 the line goes up a streetlight pole and all of a sudden
28 turns into a distribution circuit because it is powering a

1 billboard. Are there -- are there other overhead problems
2 on demarcation other than the one we just discussed, which
3 is THESL conductors sitting on THESI poles?

4 MR. LaPIANTA: Again, I think, as I testified to in my
5 evidence-in-chief, I think -- I think the answer is clearly
6 there are other examples out there. They're not readily
7 known to me off the top of my head. But given there must
8 be thousands of combinations and permutations of different
9 distribution configurations that may be different from the
10 one that you just described.

11 In terms of the demarcation point, clearly the
12 demarcation point on the overhead system is easily more
13 visible. It is there. But that notwithstanding, that
14 doesn't change what happens downstream from that
15 demarcation point, that in fact now those assets -- which
16 perhaps are streetlighting assets -- are in fact being used
17 as distribution assets. So yes, the demarcation --
18 demarcation point is readily more visible, but that, I
19 don't believe it would be the only example.

20 MR. FAYE: And -- and the problem, I think we have
21 already -- I have already asked you about, but I will just
22 repeat for clarity. The problem of distribution assets on
23 your affiliate structures could be solved simply by a
24 joint-use agreement. You take -- take ownership of those
25 conductors and form a joint-use agreement with them to rent
26 space on the pole. That's perfectly possible, isn't it?

27 MR. LaPIANTA: Hypothetically, that could be -- that
28 could be feasible. But my understanding, there may be

1 restrictions in the APA with -- with the city.

2 MR. FAYE: And the APA, remind me about that again.

3 MR. LaPIANTA: The Asset Purchase Agreement; there may
4 be contractual restrictions in that agreement that would
5 preclude us from doing that.

6 MR. FAYE: And that would preclude Toronto Hydro-
7 Electric System doing it or Toronto Hydro Energy Services
8 System giving the right to do it?

9 MR. COUILLARD: I think it would preclude the transfer
10 of assets from Toronto Hydro Energy Services to Toronto
11 Hydro-Electric System. Like, if we deem assets to become
12 distribution assets, for example, as one previous example
13 you mentioned. So the trans -- the transfer of assets from
14 one entity, from the Energy Services to the LDC, is likely
15 to be problematic.

16 MR. FAYE: And we're talking specifically about
17 conductors here?

18 MR. COUILLARD: We're talking about any type of assets
19 in the agreement. The only thing that is transferable are
20 poles.

21 MR. FAYE: So if you are going to have trouble with
22 the city contract, I am just trying to think through your
23 strategy of applying to the Board before resolving that
24 potential problem. Is it possible the city could come up
25 and say: Well, we have a contract, saying we're not going
26 to allow you to transfer those assets even if the Board
27 agrees to allow you?

28 MR. COUILLARD: No. It's not a -- no. We are allowed

1 to make that request to the Board. There is nothing in the
2 agreement that doesn't -- that would preclude us from doing
3 this application.

4 MR. FAYE: So then I would -- I would conclude that
5 you are fairly confident the city is not going to object to
6 you assuming ownership. Would that be fair?

7 MR. COUILLARD: That is correct.

8 MR. RODGER: Perhaps if it is helpful, Mr. Faye, just
9 because this has come up a couple of times now, in the
10 answer to an interrogatory, which is found at section F,
11 tab 19, schedule 4, Appendix E, we actually filed the
12 entire agreement between the City of Toronto and Toronto
13 Hydro Streetlighting Inc., dated January 1st, 2006.

14 And if we go to page 45 of that agreement, clause
15 17.3, it spells out the assignment provision. And maybe I
16 will just read it for the record, but it is pretty clear
17 the city's consent is not required when the agreement is a
18 signed to an affiliate, which in this case, it is. And I
19 will just read the clause:

20 "This agreement shall not be assigned by either
21 party except with the prior written consent of
22 the other party, such consent not to be
23 unreasonably withheld, conditioned or delayed,
24 provided, however, that Toronto Hydro may assign
25 this agreement to an affiliate or a third-party
26 purchaser of the streetlighting system, without
27 the prior written consent of the city."

28 Then it goes on to talk about a third-party purchaser,

1 which is not the case here. So perhaps that will be
2 helpful for you.

3 MR. FAYE: Yes, that is helpful. And just so that I
4 am absolutely clear on the issue, it sounds like you can
5 assign the agreement, and by virtue of doing that, the
6 assets go with it. But you can't assign some of the
7 assets. Is that like -- is that a correct understanding?

8 MR. COUILLARD: Yeah, the -- currently, the agreement
9 is only providing for the transfer of poles, and it is
10 mainly due for -- this clause was included in the
11 agreement, so that if there is poles that are no longer
12 necessary or poles that are -- it is for practical reasons,
13 you know. In the same way that, you know, if there were
14 streetlighting poles or TTC poles that made more sense to
15 transfer from one entity to another, that was included in
16 the agreement for that purpose. And the main reason for
17 that is the city is always -- based on the discussion we
18 had with them -- they're always worried about duplication
19 of poles, making sure that you don't have in the same
20 corner, like, poles for streetlights or a pole from a
21 distribution company and a pole from a TTC.

22 MR. FAYE: Okay. Well, that makes perfect sense.

23 So -- so if the city did object to this red line here,
24 we're assuming that that red line is a streetlight
25 conductor that -- that now is proposed to pass over to
26 THESL. It will become a distribution conductor. It would
27 be joint use on THESI's poles.

28 And if we take the scenario where the city says: No,

1 you can't contractually do that, there is nothing to
2 prevent Toronto Hydro negotiating with Toronto Hydro Energy
3 Services for a joint-use attachment and putting up your own
4 distribution conductor on that pole. Right?

5 MR. COUILLARD: That is correct.

6 MR. FAYE: Okay, good. So there is no technical or
7 practical impediment. There might be some efficiency
8 concerns?

9 MR. COUILLARD: I think there's -- I would agree that
10 there is practical impairment, in the sense that it would
11 require probably a lot of work to either duplicate or put
12 some other conductor, depending on where we put the
13 demarcation point.

14 MR. FAYE: Well, and recognizing that -- I think you
15 have already testified that the predominant situation on
16 overhead is their luminaires are on THESL poles and fed
17 from THESL distribution circuits.

18 This one we have up on the screen is a rarity.

19 MR. COOK: No. It is part of our regular distribution
20 or part of our standard. We have underground poles,
21 underground fed poles as well as overhead fed. So it is
22 not a rarity. It is not a one-off. One of the other
23 restrictions, I might add, in putting any additional type
24 of conductor or attachment on there, is that these poles
25 were designed -- they're a class B-type pole that has
26 restrictions with the amount of weight that can be
27 attached. So having redundant cables attached to it may --
28 may restrict our ability to do that, based on the class of

1 the pole.

2 MR. FAYE: Okay. So you say that this is not a
3 rarity. Can you give me an estimate in percentage terms of
4 all of the overhead lighting, how much is on Toronto Hydro
5 poles as opposed to how much is on your own dedicated
6 poles?

7 MR. COOK: There are 50,000 dedicated streetlighting
8 poles, approximately, of 160,000 fixtures.

9 MR. FAYE: So about a quarter. Or, sorry, a third.
10 160,000 total. And about a third of them are on your poles
11 as opposed to Toronto Hydro-Electric System's poles?

12 MR. COOK: That's correct.

13 MR. FAYE: Okay, and of that -- of that third that is
14 on your poles, how many end up at this situation with the
15 traffic signal at the end that would be stranded for the
16 sake of the electrical supply system, unless the
17 streetlighting cable was used?

18 MR. COOK: I wouldn't be -- I wouldn't have that
19 information.

20 MR. FAYE: It would be less than 100 percent, though,
21 wouldn't it?

22 MR. COOK: Less than 100 percent; correct.

23 MR. FAYE: Less than fifty?

24 MR. COOK: I would be guessing, sir.

25 MR. FAYE: Okay.

26 MR. COOK: And if it wouldn't be streetlighting, or,
27 sorry, traffic poles, it could be some other unmetered
28 scattered load.

1 MR. FAYE: It might be billboards or Bell kiosks of --

2 MR. COOK: That's correct.

3 MR. FAYE: But that would only occur if they happened
4 to want to be on the side of the street where the
5 distribution circuit was not. If they wanted to be on the
6 other side where the distribution --

7 MR. COOK: Or the distribution system is not present
8 at all. The reverse happens, where the distribution system
9 is underground and our system could be overhead.

10 MR. FAYE: Okay. That is a further complication.
11 Well, let's leave it at that for overhead.

12 MR. LaPIANTA: Sorry, Mr. Faye, if I could interrupt
13 for a moment. In fact, there is a concentrated effort on
14 behalf of the city's urban planning committee to in fact
15 locate the street furniture, if possible, not under the
16 distribution line.

17 So, in fact, the emphasis is locating it on the
18 opposite side of the street, and that happens regularly.

19 MR. FAYE: Okay. But just as a final comment on that,
20 the houses that are on the other side of the street, they
21 get service; right?

22 MR. LaPIANTA: Yes.

23 MR. FAYE: And that is overhead service, where the
24 overhead distribution is?

25 MR. LaPIANTA: In general, but there is a combination
26 thereof. Some customers like to have their service
27 underground and will pay for that.

28 MR. FAYE: So that is an option, though. That is not

1 the norm. If it is an overhead distribution circuit, most
2 of the secondaries are overhead; right?

3 MR. LaPIANTA: That's correct.

4 MR. FAYE: So across the street, how many of them go
5 directly from the pole or from a mid-span tap directly to
6 the stand post on the house? Are there ones where you have
7 to have an intermediate pole on the other side to support
8 the conductor?

9 MR. LaPIANTA: Sure. It depends on the width of the
10 boulevard and the road allowance. If the slack span is too
11 far, we need to put stub poles on the opposite side of the
12 street to hold the service.

13 MR. FAYE: And in that case, if there was a stub pole
14 and someone wanted a Bell kiosk there, you could use the
15 stub pole for the service to the Bell kiosk, as well,
16 couldn't you?

17 MR. LaPIANTA: Sure.

18 MR. FAYE: Okay. So just to sum that up, there are no
19 -- there is none of the connector problem that you have in
20 the handwells on overhead. You can visibly see where the
21 connection is. They use the open wire construction so that
22 there is not a variety of different connectors being used.

23 The connector problem that you have with the
24 underground, is that also present on the overhead?

25 MR. LaPIANTA: Not that I'm aware of, sir.

26 MR. FAYE: Okay, thanks. If I could have you turn up
27 your affidavit and go to section 13?

28 In this section, we're talking again about the

1 underground handwells, and there is the comment here or a
2 statement in the middle, "The handwells commonly include
3 utility..."

4 That would be THESL, I take it; is that right?

5 MR. LaPIANTA: Yes.

6 MR. FAYE: "Street light", that is THESI; right?

7 MR. LaPIANTA: Yes.

8 MR. FAYE: "And third party circuits", who owns the
9 third party circuits?

10 MR. LaPIANTA: It can be a variety of asset owners,
11 BIAs, Pattison. Again, it is pretty much anybody who has
12 applied and that we connect them through that handwell can
13 have circuits running through that hand hole -- through
14 that handwell, rather.

15 MR. FAYE: Do I understand those circuits to be just
16 the sort of supply conductor to their load, or are these,
17 you know, actual sort of circuits that connect a whole
18 bunch of things?

19 MR. LaPIANTA: Typically it is just the load, just a
20 single feed to a load.

21 MR. FAYE: Okay. So this is back to our discussion on
22 how you might also connect Pattison signs, for instance.
23 You could connect them in the handwell, and then off they
24 go to serve the load, but they don't run from handwell to
25 handwell, do they?

26 MR. LaPIANTA: Typically, no, they would not,
27 although, again, it depends on the installation.
28 Typically, the installation will be such that the service

1 is taken from the nearest handwell to the point of supply -
2 - to a load, rather.

3 That doesn't preclude from having a connection, for
4 whatever reason, in the hand hole immediately to the left
5 or to the right, for lack of better geographic orientation,
6 of the actual load to another handwell, and then to the
7 load.

8 Keep in mind that some of these handwells become very
9 occluded. It becomes difficult to make connections in
10 there. The handwell which appears to be the most readily
11 available for connection at that time when we open it -- it
12 may be such that we cannot make any other further
13 connections, and therefore may have to go one handwell or
14 more downstream.

15 MR. FAYE: Okay, that is fair. So the demarcation
16 confusion that results from all of this stuff is that when
17 you open the handwell, you can't tell whose connections are
18 whose; is that the problem?

19 MR. LaPIANTA: Well, again, Mr. Faye, I think I would
20 refer you back to the diagrams we had up earlier.

21 Unmetered scattered load is introduced into the
22 circuit. That -- conceptually that demarcation point
23 changes. In addition, yes, when we open the handwell, it
24 is not always readily understood who the asset owner is.
25 It is pretty clear as to who the utility is -- or, rather,
26 our equipment, because we know what we use in terms of
27 split bolt connectors, but if there is other loads
28 connected, other connectors inside that handwell, it is not

1 always readily understood if it is a streetlighting
2 connection, if it is BIA connection or if it is something
3 to TTC, to a billboard.

4 It usually needs to be traced out. We usually have to
5 troubleshoot it. There is no identification in the hole.

6 MR. FAYE: Okay. So then if Toronto Hydro-Electric
7 System takes over that whole system, how does that resolve
8 the issue that you have just brought up? When you lift the
9 handwell, doesn't it look exactly the same? Isn't there
10 exactly the same confusion?

11 MR. LaPIANTA: Well, I think the issue goes back to
12 what we -- I think I testified to that in the contact
13 voltage review. It is a matter of seizing control of that
14 handwell and making sure that there is processes and
15 procedures in place to ensure that we control access to
16 that handwell, because right now that access is not -- is
17 not where it should be.

18 MR. FAYE: So you're saying that others can go into
19 the handwell and make a connection without your knowledge?

20 MR. LaPIANTA: It happens, yes.

21 MR. FAYE: Okay. So that's a theft of power issue, is
22 it not?

23 MR. LaPIANTA: It would be, yes.

24 MR. FAYE: Okay. Would it be possible to simplify the
25 layout of the handwell simply by colour coding the thing,
26 that you use one colour, street lights use another colour,
27 BIA uses another colour and --

28 MR. LaPIANTA: Colour code the handwell or the

1 conductors within the handwell?

2 MR. FAYE: The conductors, or tag them in some fashion
3 that it is immediately obvious what needs what?

4 MR. LaPIANTA: Sure, you could. I mean, anything is
5 doable.

6 MR. FAYE: Okay. But would that resolve the
7 operational safety concern, that people look in there and
8 don't know what they're looking at?

9 MR. LaPIANTA: In a perfect world, if everything was
10 perfectly identified with appropriate nomenclature, sure.

11 MR. FAYE: Okay. And your comment earlier about
12 gaining control of the handwell, my understanding was that
13 Toronto Hydro does own the handwell; is that right?

14 MR. LaPIANTA: Toronto Hydro doesn't own all of the
15 handwells, though handwells in -- for example, where we
16 have exclusive streetlighting on one side of the boulevard
17 with just exclusive street light poles, again, if you refer
18 back to diagram number 1, those handwells would actually be
19 owned by the street light company.

20 If, in fact, we have -- the utility has its own
21 secondary mains running down the boulevard, which in turn
22 feed the street light assets and other unmetered scattered
23 load, the utility would own those handwells.

24 So not all belong to the streetlighting company.

25 MR. FAYE: Okay. Well, let me just make sure I
26 understand that.

27 If this is the situation that you described where the
28 streetlighting is on one side of the street, your

1 distribution secondaries are on the other side, this green
2 line on here represents whose ownership, then?

3 MR. LaPIANTA: The diagram that you are looking at
4 right now, those handwells would be owned by the
5 streetlighting company.

6 MR. FAYE: And the conductor between the handwells?

7 MR. LaPIANTA: By the streetlighting company.

8 MR. FAYE: Streetlighting company.

9 And then it could occur that the Bell booth or the
10 traffic signal gets stuck into that system?

11 MR. LaPIANTA: Correct. That is diagram number 2.

12 MR. FAYE: And you may not even have any conductor
13 around there. Okay, I think that is -- is that correct?

14 MR. LaPIANTA: Yes.

15 MR. FAYE: Okay, thanks. That clarifies things.

16 MR. LaPIANTA: Not all of the handwell system contain
17 the underground secondary main bus.

18 MR. FAYE: So for the ones that do, those are Toronto
19 Hydro-Electric System handwells, then; is that right?

20 MR. LaPIANTA: Yes. Yes.

21 MR. FAYE: All right. And you have control of those?

22 MR. LaPIANTA: Yes.

23 MR. FAYE: And could you describe what that control
24 consists of?

25 MR. LaPIANTA: Well, it's again control being
26 procedures, conditions of service for new loads to be
27 connected to those handwells. The actual physical access
28 to the handwell is no different than the streetlighting

1 handwell. It's a penta head bolt. Actually, it is not
2 even a penta head bolt. I believe it is just a regular
3 carriage bolt, two bolts, and remove the hand -- the lid is
4 removed.

5 MR. FAYE: So if anyone can get into these things,
6 that must cause some concern about having control of it,
7 wouldn't it?

8 MR. LaPIANTA: Yes, and in fact that is to a large
9 extent the discussions that we're having with the ESA right
10 now, to come up with a proprietary mechanism by which we
11 can lock these things down.

12 MR. FAYE: And does the Energy Services company have a
13 similar concern about the handwells that are their
14 property?

15 MR. LaPIANTA: Yes. It stands to follow.

16 MR. FAYE: Okay. So resolving that cover plate issue,
17 so that not just anyone with a socket wrench can come along
18 and open the thing up, that -- that, in your estimation and
19 in THESI's estimation, gives you control of the handwell?
20 Is that fair?

21 MR. LaPIANTA: I think if we can -- I think if we can
22 come up with a way of locking down the handwell lid, yes.

23 MR. FAYE: Okay. So now moving to the streetlighting
24 handwells, in there, you are also saying there is
25 demarcation issues. Is that right?

26 MR. COOK: Yes. Exactly. It is demonstrated in what
27 you have up there right now, in diagram 2.

28 MR. FAYE: All right. And -- and there is the two

1 issues again. One is it looks like it is a distribution
2 circuit on a streetlighting system. And the second one, as
3 I understood it, is that the connectors being used in the
4 handwell for foreign circuits, third-party circuits, may
5 not be readily identifiable from the streetlighting
6 connectors.

7 MR. COOK: That's correct.

8 MR. FAYE: Those are both fair statements? And is the
9 solution that I proposed, colour-code them, is that a fair
10 solution to that problem too?

11 MR. LaPIANTA: Again, Mr. Faye, I think -- and I am --
12 very respectfully, it is probably a very simplistic of view
13 of how we can propose to do this.

14 I can tell you that for example, an analogous example,
15 at amalgamation, bringing six utilities together, we have
16 had obviously six sets of nomenclature standards;
17 nomenclature is the lettering and numbering that is used to
18 identify equipment. We have been at that project now for
19 some five years and millions of dollars to try and
20 effectively re-label and harmonize the process by which
21 equipment is labelled. For the streetlighting system, that
22 would be very similar. And so while, sure, I think it can
23 be done, the practicality, I think, is another point of
24 discussion. I think it's --

25 MR. FAYE: I'm sure it is a very big job. But from
26 what you said, it sounds like it needs to be done
27 regardless of who owns the thing, because there is a safety
28 issue here. Did I get that wrong?

1 MR. LaPIANTA: No. Absolutely. But I think there is
2 not -- there is other ways to perhaps readily identify
3 equipment, other than re-labelling it. And I'm -- we
4 haven't put our heads around what that might be. I guess
5 the point I am making is that it may not just be the
6 labelling.

7 MR. FAYE: Okay. But it is going to -- to involve
8 lifting the lid off the handwell, finding out who owns what
9 and doing something to distinguish it from each other?

10 MR. LaPIANTA: Absolutely.

11 MR. FAYE: Okay. And that needs to be done regardless
12 of whether THESI continues to own things or whether it all
13 goes over to THESL?

14 MR. LaPIANTA: Yes. That's correct.

15 MR. FAYE: Okay. So that -- that is not a reason to
16 transfer the ownership, is it?

17 MR. LaPIANTA: Well, we believe that there's -- again,
18 there is efficiencies to be gained by having THESL perform
19 those activities, as opposed to THESI.

20 MR. FAYE: Okay. I understand that.

21 Let's move to efficiency, and I think that was the
22 second main bullet in your affidavit, starting at section
23 15. And here you -- you describe trouble call response.
24 And it appears from, you know, sort of my uninformed
25 reading of it, that THESI only works during the day. Is
26 that right? They don't have trouble call response of their
27 own?

28 MR. COOK: We do not have a night shift for trouble

1 call. That's correct.

2 MR. FAYE: Okay. So you rely on THESL's control room;
3 is that right? For trouble calls?

4 MR. COOK: We rely on THESL system response
5 representatives to respond to calls for us, yes.

6 MR. FAYE: During normal working hours, if somebody
7 wants to report a streetlight problem, do they call THESI
8 or THESL?

9 MR. COOK: They call THESI. They may call THESL, but
10 that would be incorrect. We have our own call centre.

11 MR. FAYE: You have a call centre. Okay. Then after
12 normal working hours, your phones are redirected to THESL's
13 call centre?

14 MR. COOK: No. It is a 24/7 call centre we run.

15 MR. FAYE: So -- so your operator redirects the
16 problem to THESL?

17 MR. COOK: That's the case.

18 MR. FAYE: Okay. THESL goes out and responds to it.
19 And then it seems if they find it is a streetlighting
20 problem, they don't do anything about it, unless it is some
21 sort of safety hazard. Is that fair?

22 MR. COOK: Well, that would be the reason that they
23 would be dispatched, is because of a safety reason.

24 MR. FAYE: Well, let's take a practical example. If
25 someone calls in and says: A streetlight outside my house
26 isn't working, and it is 6:00 o'clock in the evening and
27 your crews have gone home for the day, what do you do with
28 that message?

1 MR. COOK: We would take that call, log it, create a
2 work order and address it the following day.

3 MR. FAYE: Okay. So then give me an example of the
4 kind of call that comes in that THESL has to respond to.

5 MR. COOK: A pole would be hit. One of our poles
6 would be hit by a car.

7 MR. FAYE: Okay. And what does THESL do when they get
8 there?

9 MR. COOK: They would make the site safe, and advise
10 us that either the pole can be made safe or we would have
11 to contact one of our crews to come in to address that
12 issue.

13 MR. FAYE: Okay. So if the pole was lying across a
14 road, you would call in a crew to replace the pole?

15 MR. COOK: That's correct.

16 MR. FAYE: If the pole --

17 MR. COOK: Not replace it, but get it off the roadway.

18 MR. FAYE: All right, and any replacement is done on
19 normal working hours the next day; is that right?

20 MR. COOK: Primarily, yes.

21 MR. FAYE: And you pay THESL for this service, I would
22 assume?

23 MR. COOK: I pay THESL for their system response.

24 MR. FAYE: Now, could you pay THESL to make the
25 necessary repairs at the same time?

26 MR. COOK: To have a crew come out and do effectively
27 the same repairs that we do with the contractor? Is that
28 what you're -- you're saying?

1 MR. FAYE: Well, let's take your broken pole example.
2 Could THESL replace the pole for you?

3 MR. COOK: THESL has that ability.

4 MR. FAYE: Is there any regulatory reason why they
5 couldn't do it on a contractual basis?

6 MR. COOK: I am not aware of any, no.

7 MR. FAYE: Okay. So -- so the -- the duplication of
8 effort that appears to be discussed here in 15 and 16 is
9 multiple crews attending at the same site when one could do
10 the job. And there is a way of doing that, is there not?
11 You can do it by contract?

12 MR. COOK: Well, I think you have identified only one
13 of those situations where multiple crews would respond to,
14 but in answer to your question, yes.

15 MR. FAYE: Are there other kinds of practical examples
16 where that idea wouldn't work, that THESL crews wouldn't be
17 able to make the necessary repairs?

18 MR. COOK: I could take you to diagram 6, I believe,
19 that shows and demonstrates that.

20 MR. FAYE: Okay.

21 MR. COOK: This is where an underground fault has
22 occurred, and ultimately at the end of the line, the USL
23 customer, which is a distribution customer, is out of
24 power.

25 MR. FAYE: Right.

26 MR. COOK: My crews may attend there and determine
27 that those lights, the streetlights are out, because
28 anything downstream of that underground fault, which is

1 adjacent to the first pole -- so we may respond to that
2 first pole that is downstream of that, determining that the
3 light is out. However, we do not respond to restoring
4 power for distribution customers. That would require a
5 system response crew to come in to do that. And that was
6 who would be stringing that conductor, that temporary
7 conductor at the top of the pole, to restore power to their
8 customer.

9 MR. FAYE: Okay. So if this happens during the day,
10 the THESI crew goes out, finds out that it isn't a simple
11 burnt-out bulb or something, that there is an underground
12 cable fault, and THESL has to come and fix that. Is that
13 right?

14 MR. COOK: THESL has to come and put a temporary
15 repair in. That's correct.

16 MR. FAYE: Okay. If this happens at night, then the
17 THESL crew arrives on scene and finds out that it is not a
18 simple burnt-out bulb; it's an underground cable fault.
19 Why couldn't they repair it?

20 MR. COOK: They would not repair the underground
21 fault. They would put in a temporary means to restore
22 power to their customer at night.

23 MR. FAYE: Okay. So in any event, that underground
24 fault doesn't get repaired until the next day, under normal
25 conditions, unless it is an emergency safety hazard of some
26 sort?

27 MR. COOK: That's fair.

28 MR. FAYE: Okay. So the only thing that remains here

1 is who strings that piece of temporary conductor to get the
2 traffic signals going again. During the day, it sounds
3 like you said that THESI can't string that conductor. Have
4 I got that right?

5 MR. COOK: THESI would not string that conductor,
6 that's correct.

7 MR. FAYE: THESI could string the conductor, though,
8 it sounds like you're saying.

9 MR. COOK: We have that capability.

10 MR. FAYE: Okay. And what would you need to arrange
11 with THESL to allow you to do so?

12 MR. COOK: I assume it would be a service-level
13 agreement that would allow us to do that.

14 MR. FAYE: Okay. Again, there is no regulatory
15 problem here. There is no technical problem. It is really
16 a matter of practicalities of getting service-level
17 agreements in place?

18 MR. COOK: Yes.

19 MR. FAYE: Okay. Moving to the next major section
20 with safety, and here on section 18, THESL has gone out to
21 do some work, replacement or conversion work, you say. And
22 during the course of that, they -- they isolate the
23 secondary and somehow the streetlight gets disconnected.
24 It sounds like THESL doesn't know they just disconnected a
25 streetlight. Have I got that scenario right?

26 MR. COOK: That's correct.

27 MR. FAYE: Okay. And the reason they don't know is
28 because you don't have a diagram of the system, so they

1 don't know what they're disconnecting? Is that the main
2 reason here?

3 MR. COOK: I wasn't on site, so I would assume that
4 there was some difficulty they would have in identifying
5 what was their customer loads that they were removing and
6 the streetlighting.

7 MR. FAYE: So we are back to this, Can't tell from
8 looking at the connector who owns what, and possibly an
9 additional problem where nobody ever documented the system,
10 so you really don't have a drawing for them to go by,
11 either.

12 In your experience, is that probably the root cause of
13 this kind of situation developing?

14 MR. COOK: It is a possibility.

15 MR. FAYE: Okay. Now, in section 19, the scenario
16 continues. THESI is called out because the street light
17 has gone out and someone has reported it, and they can't
18 immediately figure out why it is not working, so they put
19 in a temporary overhead.

20 And it sounds like you are free to do that, but we
21 just discussed the situation where you said you don't have
22 a service level agreement, I think, that would allow you to
23 string temporary overhead feeds, or did I misunderstand
24 that?

25 MR. COOK: There is a distinct difference in trying to
26 restore power under an emergency situation to our asset and
27 a distribution customer.

28 MR. FAYE: So a burnt-out luminaire, is that an

1 emergency?

2 MR. COOK: In this case that we're referring to, it
3 was more one. I believe it was in the neighbourhood of 20
4 right at an intersection.

5 MR. FAYE: Okay. So THESI is authorized to make that
6 temporary connection under those conditions?

7 MR. COOK: Correct.

8 MR. FAYE: Okay. And it is only a matter of a
9 contract to extend that authorization, because you are
10 obviously competent to do it; correct?

11 MR. COOK: We are competent, yes.

12 MR. FAYE: Okay. The next stage in that scenario is
13 THESL comes back after it has done its upgrade work and it
14 reconnects this circuit that they didn't know the street
15 light was on. And now it sounds like THESI regards the
16 temporary overhead to be a permanent overhead, or did I
17 misread that?

18 MR. COOK: I believe at that time that the crews --
19 the specific matter when the crews met on site, it was
20 determined that it was going to be a lengthy period of time
21 for this reconstruction to take place.

22 So that's why the decision was made to put in a
23 permanent installation.

24 MR. FAYE: A permanent overhead?

25 MR. COOK: Correct.

26 MR. FAYE: That permanent overhead consists of the
27 temporary overhead that was originally done?

28 MR. COOK: It was just one permanent installation done

1 at the time after the crews met to discuss it.

2 MR. FAYE: Okay. So when the circuit is re-energized,
3 now you have two feeds to the street light, off the same
4 secondary, but two feeds; right?

5 MR. COOK: Not off the same secondary, but there could
6 potentially be two feeds there. However, we safely
7 isolated it.

8 MR. FAYE: So it blew a fuse? How did you determine -
9 - if they didn't know they were re-energizing an
10 underground street light cable, how did you figure out
11 there were two secondaries there?

12 MR. COOK: They energized it, but where we had
13 isolated it, it was safe, so it would carry voltage and not
14 go to fault.

15 MR. FAYE: So you knew it was there?

16 MR. COOK: I knew it was there, and I knew we had to
17 isolate at that location to install the permanent overhead.

18 MR. FAYE: Okay, I misunderstood. It sounded to me
19 like it was possible that THESL could come out, re-energize
20 the thing, and now you have two feeds to the same
21 luminaire, but that isn't the case. All right.

22 So that is an interesting scenario. How often does
23 this happen?

24 MR. COOK: I am not sure of the frequency, but there
25 is a lot of conversion work that is being done by the
26 distribution company that would impact our secondary.

27 MR. LaPIANTA: And that is really, Mr. Faye, if I can,
28 the essence of paragraph number 20, is that in fact if the

1 distribution system and the streetlighting systems were
2 allowed to evolve simultaneously by having one asset
3 manager determine the investments required, rather than
4 what we do now, which is the regulated business has
5 extensive rebuild work in the areas and the streetlighting
6 plan is otherwise left to its own and we have to build
7 around it, connect around it, design around it, I think a
8 lot of these issues, the vast majority of these issues,
9 would be eliminated.

10 MR. FAYE: I think I agree with you, in part. I think
11 that the transfer of that streetlighting conductor to your
12 distribution system is a very sensible suggestion.

13 I just don't see transferring everything else, because
14 I don't understand why poles and luminaires have really
15 anything to do with distribution. To me, they are loads.
16 Am I missing something here?

17 MR. LaPIANTA: That's an interpretation, Mr. Faye.

18 MR. FAYE: Okay, thanks.

19 I think your last section here on the Affiliate
20 Relationships Code is probably better dealt with under our
21 IR No. 19, and that is section F, tab 19, schedule 19. We
22 actually asked some questions.

23 Now, here it seemed to us, in reading the affidavit,
24 that you felt that sharing information with THESI was
25 somehow -- operational information was somehow contravening
26 the Affiliate Relationships Code and complicating your
27 lives. That was the sense I got from it.

28 Is that generally an accurate understanding?

1 MR. SARDANA: Mr. Faye, I think that is generally
2 correct.

3 MR. FAYE: Okay. And I guess what I am wondering is,
4 when we're talking about day-to-day work plans about a
5 THESL crew going out to work on a secondary that has
6 streetlighting on it, do you feel that it offends the ARC
7 to call them up and say, We're going to be working on a
8 circuit that you have street lights on?

9 MR. SARDANA: I suppose not in the strictest sense of
10 ARC interpretation, in that there is no sensitive customer
11 data being divulged, et cetera.

12 MR. FAYE: All right. Well, let's take one of your
13 diagrams scenarios where you've got a load customer, not a
14 street light customer, but essentially being served from
15 the streetlighting cable.

16 Do you think it offends the ARC to tell them, There is
17 a Bell booth on there that we're going to be interrupting,
18 too?

19 MR. SARDANA: No.

20 MR. FAYE: So what work plans mentioned in section 30,
21 the last sentence, how does the regulation limit sharing of
22 your day-to-day work plans to eliminate this confusion
23 between THESI and THESL crews?

24 MR. COUILLARD: Well, Mr. Faye, we get into actually a
25 final question here of where the ARC starts and what is the
26 repercussion of the ARC, because if THESI makes available
27 information about its infrastructure to streetlighting,
28 then if you follow the spirit of the ARC, this information

1 has to be made available for any other people that would
2 like to get this information.

3 Would it be correct to say that it would probably help
4 if this information was shared? Yes, I will definitely
5 give you that.

6 On the other hand, THESL doesn't want to open it up to
7 everybody to see the systems and to see all of the
8 different areas of intermixing and mingle of the system and
9 all of the design.

10 So we have a bit of an internal debate here of, like,
11 between sharing this information and opening it up to
12 everybody. And I think that is the -- you know, the main
13 issue we have here, where, you know, if these two systems
14 were integrated, we wouldn't have that problem.

15 MR. FAYE: Okay. So if I could paraphrase that, it is
16 not the ARC that is constraining you. It is your own
17 policies?

18 MR. COUILLARD: No. I disagree with the statement. I
19 think the interpretation of the ARC, what is at stake here
20 is what is allowed under the ARC. I am actually not sure
21 if that is -- per the ARC perspective, this sharing of
22 information is allowed. I mean, it has never been tested.

23 MR. FAYE: But the sharing of information we're
24 talking about is that if Joe's bike shop is attached to the
25 street light conductor a block down, you ought to know that
26 before you start working on it. That is the kind of
27 operational information that would be transmitted.

28 Everybody knows Joe's bike shop is connected, because

1 the lights are on. How can that be confidential?

2 MR. LaPIANTA: Again, Mr. Faye, I don't mean to sound
3 argumentative, but I think that is a very simplistic view.
4 I think paragraph 30, if I could direct you to Board Staff
5 Interrogatory No. 2, section F, tab 18, schedule 2, it
6 outlines five pages of essentially processes and procedures
7 that THESI has to have in place in order to deal with THESI
8 for situations that otherwise could be eliminated, if in
9 fact that street light assets were part of the regulated
10 business.

11 MR. FAYE: All right, I have that up. That is Board
12 Staff IR No. 2.

13 MR. LaPIANTA: section F, tab 18, schedule 2.

14 MR. FAYE: And I see a bunch of stuff on page 2 here
15 that -- you know, Roman I, Roman II, Roman III.

16 Is that the stuff that you say needs to be in place
17 with THESI to properly administer your system?

18 MR. LaPIANTA: Yes. Pages 2, 3, 4 and 5 of 5 are in
19 fact all processes and procedures that we have had to put
20 in place to, in fact, treat THESI as any other third-party
21 customer.

22 MR. FAYE: Let's just take one of these at random.
23 Let's take number 2.

24 "For new street light circuits, THESL must keep
25 THESI plants separate."

26 And it looks like this is a situation where you are
27 digging a trench and everybody is putting their stuff in
28 there and THESI wants to put a streetlight conductor in.

1 And the conclusion is that that has to be separate
2 from your plant. Have I read that right?

3 MR. LaPIANTA: That's correct. It has to be
4 physically separated.

5 MR. FAYE: Physically separated.

6 Do you rent ducts to other utilities? To Bell Canada,
7 to Rogers?

8 MR. LaPIANTA: They lease our ducts, yes.

9 MR. FAYE: And so THESI could lease a duct off you and
10 pull their conductor in there. They don't really need to
11 have their ducts separated, do they?

12 MR. LaPIANTA: Again, this refers to brand new
13 streetlight circuits. So from an engineering perspective,
14 it's much more practical to have the actual streetlight
15 conductor physically separated from the rest of the plant,
16 for reactive maintenance purposes, for troubleshooting, so
17 on and so forth, for future expansion.

18 MR. FAYE: So for brand new construction, you build a
19 duct bank but you don't rent space to anybody. Is that
20 what I should take from that answer?

21 MR. LaPIANTA: No. We do rent space, but that's --
22 again, that is physically separated from our plant.

23 MR. FAYE: Okay. And -- and my suggestion that THESI
24 might also rent space, is that an impractical suggestion?

25 MR. LaPIANTA: They could, if they so chose to.

26 MR. FAYE: Okay. And -- but this whole bullet here
27 seems to be focussed on the fact that it is so inefficient
28 because THESI has to have their own duct and you've got to

1 dig the trench deeper. But they don't really, do they?
2 They can rent a duct from you?

3 MR. LaPIANTA: No. I think the point speaks to costs
4 that are needlessly borne by THESI. And I think any way
5 you cut it, there is going to be costs associated with
6 whether you rents duct or whether you physically separate
7 it.

8 MR. FAYE: Okay, so if I follow the thought to its
9 logical conclusion, now the streetlighting system is yours,
10 you need a duct to put your streetlight cable in, do you
11 not?

12 MR. LaPIANTA: Yes.

13 MR. FAYE: Would it be in your duct structure?

14 MR. LaPIANTA: No. Again, we would move it. It would
15 be physically separated.

16 MR. FAYE: So let me come back to -- I think I heard
17 you say that you rent ducts in your duct structure. Did I
18 get that wrong?

19 MR. LaPIANTA: Sorry, Mr. Faye?

20 MR. FAYE: I think I heard you testify that you do
21 rent ducts to other third parties like Bell Canada, like
22 Rogers Cable. Are those ducts in your duct structure, or
23 are they separate ducts you also put in?

24 MR. LaPIANTA: They're physically separated within the
25 trench. They're not in the same -- they're not in the 3-
26 by-3 or 4-by-4 configuration. Again, they're layered.
27 They're physically separated within the trench.

28 MR. FAYE: But they are your ducts?

1 MR. LaPIANTA: Yes, they're our ducts. They rent our
2 ducts.

3 MR. FAYE: They rent your ducts. And so --

4 MR. LaPIANTA: If there's room, if we have
5 availability. Again, this is new construction. The
6 utility could elect to run their own duct.

7 MR. FAYE: Yeah. Always. But if you are putting in a
8 duct structure 3-by-3 -- that is nine ducts -- what I think
9 I hear you saying is those nine ducts are reserved to
10 Toronto Hydro's exclusive use. You never rent those out.
11 Is that right?

12 MR. LaPIANTA: Where -- to the best of our ability,
13 no, we will not rent it out. We reserve that for the
14 primary.

15 MR. FAYE: Okay. So then because of practical
16 efficiencies, you are also available to throw a bunch more
17 ducts in there, own them and rent them.

18 MR. LaPIANTA: Yes.

19 MR. FAYE: Okay. So those ducts, where do they go?
20 Beside? On top? Underneath?

21 MR. LaPIANTA: Typically on top.

22 MR. FAYE: On top.

23 MR. LaPIANTA: It depends on the configuration, but
24 typically on top.

25 MR. FAYE: And you would ordinarily then rent them to
26 the cable TV company, the telephone company, whoever other
27 -- who wants to run wires into that new construction.

28 MR. LaPIANTA: Yes. They have their own duct in our

1 concrete-encased duct bank.

2 MR. FAYE: This is one big duct bank, or it's two duct
3 banks?

4 MR. LaPIANTA: No, this is one big duct bank.

5 MR. FAYE: One big duct bank. The bottom three rows
6 are yours. Then there is a fourth row on top. And those
7 are the ones you rent?

8 MR. LaPIANTA: Yes.

9 MR. FAYE: Okay. And THESI could rent one there?

10 MR. LaPIANTA: Sure.

11 MR. FAYE: Okay. So why would they put -- why would
12 they ask you to dig the trench deeper and put another duct
13 on top of this big concrete-encased duct structure?

14 MR. COOK: It is the nature of the deployment of that
15 secondary that we require. I think what you are alluding
16 to would be rented to Rogers Cable TV, that is looking at
17 trying to send that -- that main line to one of their
18 kiosks, and therefore just going completely straight down
19 the run.

20 By the nature of our business, we need to branch off
21 left and right and across the road in order to facilitate
22 service to the -- to the poles, the streetlight poles.

23 So by the very nature of the fact that we're moving
24 more left and right than we are down the trench, we elect
25 to use a separate -- two separate conductors on top of the
26 duct bank.

27 MR. FAYE: Okay.

28 MR. COOK: Of poly pipe.

1 MR. FAYE: That makes perfect sense, but I will ask
2 you: Once THESL takes over ownership, aren't they faced
3 with the same issue?

4 MR. COOK: The same type of construction requirement,
5 yes.

6 MR. FAYE: Okay. So there is no difference. That
7 separate duct on top of the duct bank has got to be there
8 whether THESI owns it or THESL owns it?

9 MR. COOK: That's correct.

10 MR. FAYE: Okay. All right. Let me... Mr. MacIntosh
11 has just brought to my attention the time, Mr. Chair. I
12 still do have a little bit to go through; it is probably
13 about a half an hour. If you would like to take the lunch
14 break now, it is a logical breaking place.

15 MR. KAISER: All right. We will do that.

16 Mr. Rodger, can I leave you with a question which I
17 think is maybe a legal question, just to consider over the
18 lunch break?

19 In the Asset Purchase Agreement of June 15th, where
20 NewCo is purchasing from Toronto Hydro Energy Services,
21 NewCo assumes liabilities. And my question is: We have
22 had some reference today to this contact voltage provision
23 and the costs associated with dealing with that issue; is
24 that one of the liabilities that NewCo will assume under
25 section 3.1?

26 And the other related question is: In 5.8, schedule
27 5.8, you list the liabilities; they're basically mostly
28 personal injury claims. I know you have set the purchase

1 price at 66-odd million. Have you estimated the cost of
2 the liabilities that would be assumed by NewCo? If you can
3 just give some consideration to that over the break?

4 MR. RODGER: Yes. Will do.

5 MR. KAISER: All right. We will come back in an hour.

6 --- Luncheon recess taken at 12:12 p.m.

7 --- Upon resuming at 1:30 p.m.

8 MR. KAISER: Please be seated. Any preliminary
9 matters, Mr. Rodger?

10 **PRELIMINARY MATTERS:**

11 MR. RODGER: Just one, Mr. Chairman. You had asked me
12 before the break a couple of questions about what
13 liabilities were being assumed by NewCo, and you had
14 referenced section 1.3 of the asset purchase agreement
15 between NewCo and Toronto Hydro Energy Services Inc.

16 And, in essence, what section 3.1 of that agreement
17 states is that NewCo does assume the liabilities of Toronto
18 Hydro-Electric Services Inc. with respect to streetlighting
19 claims. And, in particular, regarding the contact voltage
20 incidents of last winter, Toronto Hydro advises me that
21 there are two potential claims, only.

22 No dollars have been associated with those claims at
23 this time. They involve, firstly, a contact voltage
24 incident involving a man who is a resident in Toronto, and,
25 secondly, a contact voltage incident involving the death of
26 a dog. And those are the only two claims that relate to
27 the contact voltage issue.

28 Otherwise, though, there are other streetlighting

1 claims that would come with this transaction. They total
2 some \$11.4 million. Although those are the stated amounts
3 of the statement of claims, they're not what the amounts
4 would be. They haven't been litigated or settled yet.

5 I am advised that under the existing insurance
6 arrangements, in an absolute worst-case scenario under the
7 insurance scheme, the exposure to NewCo would be a maximum
8 of \$900,000.

9 Also under the insurance policy - this is post merger
10 now, if the Board approves the merger - streetlighting-
11 related liabilities will be allocated to the streetlighting
12 class and paid for by that rate class, just as they are
13 now, and these costs are projected to be completely offset
14 by revenue from the streetlighting class.

15 And the only other issue, to close this loop of
16 liabilities, is that in the contact voltage hearing before
17 the Board a few weeks back, there were certain contact
18 voltage costs that the LDC incurred and which they claimed
19 on that application. There was also certain costs which
20 Toronto Hydro Energy Service experienced in the magnitude
21 of about \$500,000.

22 Those expenses are not being transferred to NewCo as
23 part of this amalgamation. Those stay with Toronto Hydro
24 Energy Services Inc.

25 I think that deals with your question, hopefully, sir.

26 MR. KAISER: All right. Thank you. Mr. Faye?

27 **CROSS-EXAMINATION BY MR. FAYE (CONTINUED):**

28 MR. FAYE: Thank you, Mr. Chair. After consulting

1 with the other intervenors, I am going to leave one area
2 that I was going to examine on with them; that is, the
3 financial valuation of the purchase.

4 So what I am going to finish up is just something that
5 we were looking at prior to the lunch break, and that was
6 Board Staff IR No. 2, I believe it is. Yes, section F, tab
7 18, schedule 2.

8 We were talking about the need for a separate
9 streetlighting duct in a joint use trench. I think we
10 concluded that irrespective of ownership, that separate
11 duct would be necessary. And I just wonder if the panel
12 could confirm my understanding of that?

13 MR. LaPIANTA: Yes, that's correct, sir.

14 MR. FAYE: Okay. If we could just flip to the next
15 page on that IR, that would be page 3, and look at another
16 instance here of (v), Roman v, civil construction. In
17 here, it appears that THESL performs the joint use trench
18 construction by way of a contractor; is that right?

19 MR. LaPIANTA: Yes. Typically, our civil construction
20 is contracted out.

21 MR. FAYE: Okay. Then it says that if there is
22 exclusive street light work to be done, Energy Services
23 hires its own contractor. Can you describe the
24 circumstances of exclusive street light work that wouldn't
25 go in the joint use trench?

26 MR. COOK: This would be the installation of the
27 streetlighting infrastructure that is not aligned with the
28 joint use. So if they're coming down a major roadway where

1 the duct bank continues and we would need to go up a side
2 street, for example, that is the component that we would
3 manage ourselves.

4 MR. FAYE: Okay. And am I right in assuming that it
5 is possible you could just tag that on to the THESL
6 contract, if you wanted to?

7 MR. COOK: We would have to -- I'm uncertain of that.

8 MR. FAYE: Well, you would have to come with -- to the
9 proper arrangements with THESL, but there is no real
10 impediment to doing so if you wanted to?

11 [Witness panel confers.]

12 MR. COUILLARD: I guess, Mr. Faye, in theory, yes,
13 you're right. We could probably tackle it. However, it
14 would introduce issues in regards to potential cross-
15 subsidization that would have to be sorted out.

16 MR. FAYE: Of course, I understand. Looking then at
17 Roman vi, electrical construction, and this, I think, is a
18 similar issue, that Toronto Hydro Energy Services hires a
19 contractor to pull cable and make terminations instead of
20 THESL contractors, who apparently are already on site.

21 And I wonder, could we draw the same conclusion that
22 it is just a matter of making the proper arrangements and
23 separating costs properly, but there is no reason that
24 THESL contractor couldn't pull the streetlighting cable to
25 make the proper connections? Is that right?

26 MR. COUILLARD: I guess, Mr. Faye, once again, I would
27 agree with you that, in theory, we could do that, and I
28 think that in a lot of instance you would see we could

1 probably do that in some of the other areas of this IR.

2 However, if we're going to start having -- you know,
3 our position is if we're going to have to try to start
4 allocating costs and figure out, you know, between every
5 contract in order to make it more efficient, I think we are
6 just a step closer in our mind, Why don't you make it in
7 one system?

8 It would make it even easier, because then you won't
9 have the burden to try to figure out whose cost is whose
10 and how much should be applied to streetlighting, and what
11 is the issue of cross-subsidization in this case.

12 MR. FAYE: Okay. Maybe I am mistaken in thinking it
13 is quite a bit simpler than that, because you already do it
14 with your other joint use partners, don't you?

15 MR. COUILLARD: I am not sure I'm following your
16 question.

17 MR. FAYE: Well, if you have a common trench with Bell
18 Telephone and Rogers Cable, you all pay a portion of the
19 civil work to create that trench; am I right?

20 MR. COUILLARD: Yes, that's correct.

21 MR. FAYE: So in the interests of efficiency, an
22 additional party like THESI, that would be a fourth party
23 to share those costs. I can understand where it would be
24 efficient if that is what you were driving at, but I
25 guess --

26 MR. COUILLARD: Yes. But I think what we -- we don't
27 want to oversimplify this, respectfully, in a sense that
28 the relationship between the street light company and the

1 electricity distribution company will be way more
2 intermingled than it is with Bell, where really the only
3 thing here is we're doing the trench, where in the case of
4 the street light system and the electricity distribution
5 system, there is a lot more interconnections that are
6 involved in here.

7 MR. FAYE: Okay. Just one last question, and it does
8 pertain to the asset value, but I am not going to go into
9 this in depth.

10 If the street light conductor is decided by the Board
11 to be more a distribution circuit than a load-serving
12 runoff, and if those were deemed by the Board to be an
13 appropriate asset for THESL to acquire, would that go into
14 your general distribution plan to be recovered from all
15 ratepayers, or do you distinguish between distribution
16 secondaries for one customer versus another?

17 [Witness panel confers.]

18 MR. SARDANA: Mr. Faye, it is our view that we could
19 likely identify the secondaries quite clearly as being part
20 of this, serving the streetlighting system or the
21 streetlighting poles, et cetera, and do a direct allocation
22 to that rate class.

23 MR. FAYE: So do I hear you correctly saying that you
24 don't anticipate that other ratepayers will bear any of the
25 burden of the costs of the streetlighting system should it
26 come over piecemeal, as I have suggested, or whether the
27 entire system comes over. In both cases, streetlighting
28 and unmetered scattered load bear the entire cost.

1 MR. COUILLARD: Well, I think in theory we would like
2 that to be the case. However, it would be a question of
3 valuation. I understand you don't want to get into
4 valuation, how you split the valuation of the overall
5 streetlights, the \$62 million that we have in the
6 application, I think. You know, we would have to figure
7 out a way to carve out what portion is related to those
8 conductors, which, you know, we haven't really paid a lot
9 of attention to.

10 MR. FAYE: Okay. I think the other intervenors are
11 going to go into this subject in much more depth.

12 Thank you, panel. Those are all of my questions.

13 MR. KAISER: Thank you.

14 Mr. Mondrow, you're next.

15 **CROSS-EXAMINATION BY MR. MONDROW:**

16 MR. MONDROW: Thank you, sir. And I think Mr. Faye
17 has very ably asked a number of - questioned the witnesses
18 in a number of areas that we would have gone into. So I
19 will be relatively brief, but I do have a couple of
20 questions I would like to take you through, gentlemen.

21 Let me start with the legislative framework. section
22 71 of the OEB Act limits the business activities of a
23 distributor to the distribution of electricity, which means
24 the conveyance of electricity at voltages of 50 kilovolts
25 or less.

26 And you would agree with me, I hope, that a primary
27 issue in this application is whether the streetlighting
28 assets are assets used in the conveyance of electricity as

1 the Act defines that. Is that fair?

2 MR. LaPIANTA: Yes, that's fair.

3 MR. MONDROW: And I would suggest another way to look
4 at the question is to ask what assets currently included in
5 the streetlighting system are used to convey electricity.
6 Those assets would be assets that you would want to
7 repatriate to the regulated distributor. Fair?

8 MR. LaPIANTA: Yes.

9 MR. MONDROW: Your -- in July, 2006, the Board then
10 had a chief compliance officer, and there was a compliance
11 bulletin issued. It is Bulletin 2006-05. And in that
12 bulletin, the CCO concluded that streetlighting is not a
13 distribution activity. You are aware of that compliance
14 bulletin, I assume?

15 MR. COUILLARD: Yes, we are.

16 MR. MONDROW: Okay. And of course you will disagree
17 with that conclusion, but you will agree with me, I hope,
18 that the issue of whether the streetlights are properly
19 distribution assets is not a new issue. It has been in
20 play at least since that bulletin was issued in mid-2006.

21 MR. COUILLARD: Yes. Even before then.

22 MR. MONDROW: And even before then.

23 In response to ECAO's Interrogatory No. 21 -- I will
24 let you turn it up, if you wish. And that is section F,
25 tab 20 -- sorry. It is section F, tab 21, but it is not
26 Interrogatory 21. I wrote that down improperly. Just give
27 me a second.

28 It is Interrogatory No. 11. So it is section F, tab

1 21, schedule 11.

2 We asked whether any of the applicant companies were
3 aware of any discussions with the Ministry of Energy
4 regarding the issue of the streetlighting system.

5 And the answer was none of the applicants is aware of
6 recent discussions with MEI staff. So I would like to just
7 confirm with you: Are you aware of any non-recent
8 discussions with MEI staff?

9 MR. COUILLARD: No.

10 MR. MONDROW: No. So "recent" -- there is no
11 particular meaning to the word "recent" in the response?

12 MR. COUILLARD: No.

13 MR. MONDROW: All right. Are you members of the EDA?

14 MR. COUILLARD: Yes, we are.

15 MR. MONDROW: And you have been members of the EDA for
16 some number of years?

17 MR. COUILLARD: I believe so.

18 MR. MONDROW: And as members of the EDA, you will get
19 EDA information bulletins about activities that the
20 organization undertakes on behalf of its members?

21 MR. COUILLARD: Yes.

22 MR. MONDROW: And that would include lobbying
23 activities?

24 MR. SARDANA: Sure.

25 MR. MONDROW: Are you aware that there was a proposal
26 by the EDA in 2007 for a regulation to exempt electricity
27 distributors from section 71 with respect to the provision
28 of streetlighting services in their franchise territories?

1 MR. SARDANA: I am aware of that.

2 MR. MONDROW: And are you aware what the outcome of
3 that -- that effort by the EDA was, Mr. Sardana?

4 MR. SARDANA: Not clearly. It's been a few years.
5 It's been a couple of years. You know, I don't have a full
6 recollection of that.

7 MR. MONDROW: Was there a legislative response that
8 provided the exemption that the EDA was seeking?

9 MR. SARDANA: I do not -- I don't believe so.

10 MR. MONDROW: Why would you not go to the government
11 to seek legislative clarification, given your
12 interpretation of section 71 and your views on the
13 streetlighting system? Why would you come to the Board
14 rather than just getting that cleared up legislatively?

15 MR. RODGER: With respect, Mr. Chairman, I think we
16 already answered that question in the application. And
17 that is, as Mr. Mondrow quite rightfully points out,
18 section 71 describes distribution as conveying electricity
19 at 50 kV or less, and as you have seen from the prefiled
20 evidence, all of the operating voltages we're talking about
21 are well within that realm. So there is no need to go to
22 the legislature. We already have the legislation that
23 provides for this activity.

24 MR. MONDROW: Well, I guess, Mr. Chairman and
25 witnesses, I would -- I would -- that's a bit puzzling to
26 me, because the EDA, at least, felt recently that it had to
27 go to the government to get an exemption, and yet you're
28 taking the position that no such exemption is required.

1 But in any event, you would agree with me that the
2 government was seized of the issue, the Ministry staff, at
3 least. And they didn't respond, either granting the
4 exemption or clarifying.

5 And so, you know, I am curious why you wouldn't try to
6 resolve this legislatively.

7 So maybe to your counsel's point, to be a bit more
8 fair, let me ask you a question rather than giving you kind
9 of a diatribe.

10 Well, let me leave that. I am not sure I can frame a
11 question that is going to be helpful to you or the Board,
12 so why don't I leave that?

13 Mr. Faye spent some time speaking with you, trying to
14 get a sense of the magnitude of the issues that -- that you
15 are facing with these USL connections through the
16 streetlighting system. And I won't go into a lot of detail
17 on that, but we did ask you some questions about that. It
18 is our interrogatory, ECAO's Interrogatory No. 4, which is
19 section F, tab 21, schedule 4.

20 And in response to that, you said that you currently
21 have these USL connections through the streetlight system
22 throughout your franchise territory. That is response to
23 part A. Am I reading that correctly, that you have these
24 connections throughout your franchise territory?

25 MR. COUILLARD: That is correct.

26 MR. MONDROW: Okay. And you also indicated that you
27 are doing new connections through the streetlighting system
28 currently, and anticipate continuing to do so. Is that

1 correct? That's part B of the --

2 MR. COUILLARD: Yes, that is correct.

3 MR. MONDROW: And what I -- what we didn't actually
4 ask you is whether those new connections that you are
5 anticipating are throughout your service territory or just
6 in the City of Toronto core. Maybe you can answer that
7 question.

8 [Witness panel confers.]

9 MR. COUILLARD: It is everywhere within the City of
10 Toronto. Like, you know, and I mean like all the entire
11 territory. The same as the end survey. We have bus
12 shelters demand all the time from the city -- or TTC,
13 sorry, and things like that. So I mean it would be done at
14 large.

15 MR. MONDROW: Okay.

16 And in part C of that interrogatory, we asked for some
17 detail on alternative connection configurations and the
18 costs associated with those. And in the response, you said
19 that the incremental costs associated with this redundant
20 infrastructure are variable, depending upon the area of
21 installation, whether the plant must be underground,
22 overhead or a hybrid, and the nature of the surface finish
23 and utility density in the area of installation.

24 And you didn't provide any cost ranges. Do you have -
25 - can you provide any cost ranges or give us a sense of the
26 sort of magnitude of costs that would be entailed at either
27 end of the spectrum, both the easy distribution system
28 connection and the more difficult distribution system

1 connection?

2 [Witness panel confers.]

3 MR. LaPIANTA: Sir, as responded to in the
4 interrogatory, we did not do any of those particular
5 calculations, but just orders of magnitude.

6 Clearly, if -- if the regulated business does not have
7 the ability to leverage the existing streetlighting plant
8 to service USL loads, it would require the building of a
9 separate, distinct infrastructure, so a redundant and
10 duplicate infrastructure, perhaps even on the same
11 boulevard.

12 Orders of magnitude? Double the cost. A fraction of
13 double the cost. But clearly it is a big number. But we
14 haven't done those calculations to that extent.

15 MR. MONDROW: All right. Part of the rationale for
16 your applications is that currently there are
17 inefficiencies in providing distribution services to some
18 USL customers connected through the streetlight system, and
19 responding to issues that arise for those customers or with
20 the streetlight system.

21 And one of the efficiencies, I gather, are duplicate
22 crews, that each entity has to retain, maintain its own
23 crews, and sometimes you have to dispatch more than one
24 crew, because you are not -- it's not clear which entity is
25 responsible. Am I understanding that correctly?

26 MR. COOK: Yes, that's correct.

27 MR. MONDROW: Are there other -- I'm sorry, I think
28 Ms. Friedman thinks I'm done or I should be done.

1 So we've got redundant crews. Are there other major
2 inefficiencies that you can encapsulate for me?

3 [Witness panel confers.]

4 MR. COOK: I guess one of the inefficiencies that we
5 experience is if a USL customer were to contact me and/or
6 our group, we would have to identify or let them know that
7 that contact needs to take place through THESL. They are
8 the ones that would identify where the supply point is.

9 So there are some inefficiencies with respect to even
10 groups that we deal with, explicitly, which would be BIAs
11 looking to attach to our system. However, only the
12 distribution system is available.

13 So they have to be passed on to the distribution side
14 to identify that connection point, to do load readings, to
15 see whether the assets we're going to add -- whether the
16 current infrastructure would support that.

17 MR. MONDROW: So what you're telling me is that if a
18 customer calls you for a new connection, you have to refer
19 them on to the utility?

20 MR. COOK: If it's to attach to the distribution
21 system, that's correct.

22 MR. MONDROW: If it's attached to the streetlighting
23 system, don't you also refer them to the utility?

24 MR. COOK: When they're attaching -- when BIAs are
25 attaching to our system, we let them know -- we have to
26 tell the customer to contact the distribution company to
27 set up an account - that's not anything that we do for them
28 - as well as getting that connection point.

1 MR. MONDROW: Right. So any customer that wants a new
2 distribution connection has to be referred to the utility?

3 MR. COOK: Correct.

4 MR. MONDROW: Okay. Are there other areas of
5 inefficiency?

6 MR. LaPIANTA: I think, again, not to belabour the
7 point, but I think Board Interrogatory 2 speaks to a number
8 of the inefficiencies. Admittedly, some of them are
9 procedural in nature, but the fact remains that the
10 regulated business treats THESI at arm's length as if it
11 would any other customer, and that, in and of itself,
12 introduces a tremendous amount of inefficiencies when
13 conducting operational work in the field.

14 MR. MONDROW: And extra costs that wouldn't be
15 incurred under your proposal?

16 MR. LaPIANTA: That's correct.

17 MR. MONDROW: Okay. And so if the Board were to grant
18 your applications, there would be significant cost savings?

19 MR. LaPIANTA: There would be cost savings, yes.

20 MR. MONDROW: Where would those cost savings -- who
21 would those cost savings accrue to? Who would benefit from
22 those?

23 MR. COUILLARD: Those cost savings are likely to
24 benefit all customers, because, for example, if the call
25 centre costs are reduced because now we only have one call
26 centre, so you are likely to see that across the board; if
27 the costs for locates is reduced.

28 So I think, as a general -- in some instance you -- if

1 it is a cost that is directly allocatable to street lights,
2 for example, then it might benefit the street light in the
3 USL customers. If it is a cost that is more general in
4 nature, it would benefit all customers.

5 MR. MONDROW: Are utility customers or utility
6 distribution customers currently paying for costs that are
7 incurred by the affiliate to provide streetlighting
8 services to the City of Toronto?

9 MR. COUILLARD: No, they're not.

10 MR. MONDROW: So will the utility itself save money as
11 a result of the granting of your applications?

12 MR. COUILLARD: It should not.

13 MR. MONDROW: So there should be no benefits to the
14 utility distribution customers?

15 MR. COUILLARD: It should not have any major benefit.
16 Even if you look at the overall numbers that we're talking
17 here as far as revenue and costs, even if there was a
18 benefit, it wouldn't be material. So there is no -- it
19 shouldn't be any material benefit or -- to the customers of
20 the utility.

21 MR. MONDROW: So all of these efficiency benefits that
22 you premise your applications on would in fact flow to the
23 City of Toronto?

24 MR. COUILLARD: No, I wouldn't say that. When we talk
25 about efficiencies, we're not only talking about dollar. I
26 think we're talking about safety of employees. We're
27 talking about, you know, making sure we're doing more
28 efficient -- making sure we can do more work with the same

1 people that we have there.

2 I think to jump to the conclusion that suddenly
3 there's going to be this pot of money available because
4 we're more efficient and this money will be directed to our
5 shareholder is fairly too simplistic, if you consider the
6 whole -- the whole picture here, where what is likely to
7 happen, instead of having two trucks going somewhere, well,
8 then you're going to have one.

9 If it is cheaper to do it that way, then overall there
10 might be some savings or there might be the ability for us
11 to dispatch trucks somewhere else to respond to some other
12 emergency or to respond to some other maintenance program
13 that we have.

14 MR. MONDROW: So from the utility perspective, I think
15 what you're telling me, Mr. Couillard, is there are no cost
16 inefficiencies from the current situation, from a utility
17 perspective?

18 MR. COUILLARD: Well, I didn't say that. What I said
19 is that, overall, the whole process will be more efficient.

20 I think it is far too simplistic to draw the
21 conclusion that, you know, the utility is not efficient
22 currently. I think we could be more efficient than we are
23 right now if we don't have the barrier that we have with
24 having those two companies.

25 MR. MONDROW: All right. Thanks.

26 Sorry, I am just trying to get you the right reference
27 here.

28 You spoke with Mr. Faye, gentlemen, about the

1 possibility of a joint use agreement between the utility
2 and the affiliate for use of the distribution poles under a
3 -- sorry, streetlighting poles under a scenario where those
4 poles remain with the affiliate. Do you recall that
5 discussion before the lunch break?

6 MR. COUILLARD: Yes.

7 MR. MONDROW: And am I correct that you already have a
8 joint use agreement with -- between the affiliate and the
9 utility for just that sort of arrangement?

10 MR. COUILLARD: Yes.

11 MR. MONDROW: Okay. And, in fact, that joint use
12 agreement is in the evidence and it is -- I am just trying
13 to go back to the evidentiary reference. It is schedule G
14 to section F, tab 19, schedule 4, if I am reading this
15 correctly. There are a lot of agreements piled up here,
16 and I thought they each had a different face page, but
17 apparently this one doesn't.

18 So if I turn up schedule F, tab 19 -- sorry section F,
19 tab 19, schedule 4, appendix E, that is the service
20 agreement, which says it has 102 pages, and there is a
21 schedule G to that agreement, which is the joint use
22 agreement.

23 Do you have that? So if you look at article 2 -- it
24 is actually section 2.1. In essence, that is where the
25 joint use is defined. The city grants to Toronto Hydro a
26 licence to access and use the joint use assets owned by the
27 city as necessary to permit Toronto Hydro to construct,
28 own, operate, maintain and otherwise exploit the SEL

1 system.

2 Now, that is -- this, I guess, is an old agreement
3 between the City of Toronto and the affiliate, but is there
4 -- so I assume there is a similar agreement between the
5 affiliate and the utility; is that right? I mean, a minute
6 ago I was reading this incorrectly. I assumed this was the
7 agreement between the affiliate and the utility that,
8 Mr. Couillard, you just answered that you have, but I guess
9 that is another agreement.

10 Is there a joint use agreement between the affiliate
11 and the utility?

12 MR. COOK: Yes, there is.

13 MR. MONDROW: There is. Maybe I can just ask you to
14 point me to it, if you know where it is. Just confirm it
15 has the same sort of clause in it.

16 MR. RODGER: I am not sure, Mr. Mondrow, that
17 agreement is in evidence, because it refers to the
18 interrogatory that talks about the city agreements, and
19 that's what was provided.

20 MR. MONDROW: Yes. Fair enough. I thought it might
21 be in evidence somewhere else. That's why I asked if you
22 knew.

23 Would you undertake to provide that? And again, I am
24 just -- I'm trying to -- Mr. Faye asked you about joint-use
25 arrangements and there was some discussion about whether
26 that would be possible, and it seems to me they're already
27 in place, and that's why I would like to have a look at
28 that agreement, just confirm what is already in place.

1 MR. COUILLARD: Can we just clarify that what you're
2 looking for is the -- any type of agreement we have between
3 the Energy Services company and the utility for use of
4 assets or any type of SLAs? Is that what your --

5 MR. MONDROW: For joint use of streetlighting assets.

6 MR. COUILLARD: Okay. We're going to look into it and
7 come back.

8 MR. MONDROW: I appreciate that. Sorry about the
9 confusion. I had misread this, but if you could look into
10 that, that would be helpful for me and hopefully to the
11 Board.

12 MS. COCHRANE: That will be Undertaking J1.2.

13 **UNDERTAKING NO. J1.2: TO PROVIDE ANY AGREEMENT**
14 **BETWEEN THE ENERGY SERVICES COMPANY AND THE UTILITY**
15 **FOR JOINT USE OF STREETLIGHTING ASSETS.**

16 MR. MONDROW: While we are on this service agreement,
17 however, between the city and the affiliate, that service
18 agreement is, under your proposal, to be assigned from the
19 affiliate to the reconstituted or the new utility; correct?

20 MR. COUILLARD: That is correct.

21 MR. MONDROW: Okay. And so if you could look at page
22 33 of the services agreement that currently exists between
23 the city and Toronto Hydro Streetlighting Inc. -- that's
24 the agreement I was just taking you to a schedule of -- at
25 section 9.7, as I read section 9.7, paragraph (a), at the
26 end of the term of this service agreement that currently is
27 in place between the city and the affiliate, the city buys
28 back the streetlights.

1 MR. COUILLARD: If there is no agreement to enter into
2 a new agreement -- into a new agreement, it is a
3 possibility, yes.

4 MR. MONDROW: Right. And so would the same result
5 then obtain if the Board were to grant your applications?
6 At the termination of the current service agreement, could
7 the city buy back the streetlights from the utility?

8 MR. COUILLARD: They could, if the agreement is
9 assigned and all of the provisions of the agreement are in
10 place, yes.

11 MR. MONDROW: Subject to negotiation of a new
12 agreement, or an extension or a variation?

13 MR. COUILLARD: Correct.

14 MR. MONDROW: And that purchase would be at a value
15 determined in accord with this -- the services agreement
16 actually has a valuation mechanism written into it, and
17 that is explained in article -- section 9.8.

18 MR. COUILLARD: That's correct.

19 MR. MONDROW: Okay.

20 MR. RODGER: And Mr. Mondrow, just to clarify, under
21 the current legislation, the city could not hold those
22 streetlighting assets as a municipal department. They
23 would have to create another distribution company to
24 transfer the assets into the new distributor.

25 MR. MONDROW: All right. Thank you, Mr. Rodger.

26 And still on the issue of these contractual
27 relationships, if you could turn up section F, tab 21,
28 schedule 7, which is another ECAO interrogatory?

1 MR. LaPIANTA: Sorry, what was the reference again?

2 MR. RODGER: Sure. section F, tab 21, schedule 7.

3 MR. QUESNELLE: Mr. Mondrow, could I interrupt for
4 just a moment here, just before I lose the thought here?

5 MR. MONDROW: Yes.

6 MR. QUESNELLE: And his is something I just wanted to
7 ask Mr. Rodger if he could expand on is just clarification
8 that he just provided as to what may have to happen at the
9 end of the agreement.

10 MR. RODGER: Yes, sir. If -- if this merger was
11 approved and then streetlighting all becomes distribution,
12 under the Energy Competition Act, municipalities can no
13 longer directly participate in distribution activities
14 without having the benefit of having those activities held
15 within a section 142 company.

16 So if the merger is approved, and in the unlikely
17 event the city did acquire those assets back, they couldn't
18 just bring them back to the City of Toronto and operate
19 them as a streetlighting business. They would be then
20 deemed to be distribution, and they could only pursue that
21 activity in a new -- in a regulated company.

22 MR. QUESNELLE: Understood. Thanks.

23 MR. MONDROW: Thank you, sir.

24 MR. BLUE: Mr. Chairman, for the City of Toronto, I
25 take Mr. Rodger to be saying that if this was approved, by
26 definition those assets would be distribution assets. And
27 then the rest of his, you know, conclusion would follow.

28 MR. MONDROW: Witnesses, section F, tab 21, schedule

1 7. Thank you.

2 I am just going to look at parts A and B. So part A
3 we asked:

4 "Under the current regulatory structure who is
5 responsible for planning and construction of new
6 or replacement streetlights, in the City of
7 Toronto?"

8 And the answer is THESI.

9 And then this is the part I don't quite understand.
10 In part B, we asked:

11 "Please detail THESL's", so the utility's,
12 "current involvement in the planning and
13 construction of new or replacement streetlights
14 within the franchise territory."

15 And the answer is:

16 "Through a service-level agreement, THESL assists
17 THESI with the installation of streetlighting
18 assets in conjunction with THESL Rebuild
19 utilizing a joint-use agreement."

20 And it seems to me that that answer gets at some of
21 the portions of the discussion that you had with Mr. Faye,
22 but I frankly can't follow the answer. So I wonder if you
23 could just maybe rephrase it and explain in just a bit more
24 detail what you mean by that part B answer. What's that
25 describing?

26 MR. COOK: It's -- this is in reference to -- well,
27 first of all, A, we do all the planning of the
28 streetlighting installation. However, the other reference

1 is the joint-use agreement, where we utilize a service-
2 level agreement to have the design and the construction
3 overseen by distribution.

4 MR. MONDROW: So this will be the agreement that you
5 have undertaken to find and produce?

6 MR. COOK: Yes. I believe that is the joint-use
7 agreement, yes.

8 MR. MONDROW: All right, so the review of that
9 document will clarify the way this answer works and that
10 will be helpful. Thanks.

11 Just a few more, if I could. And I think for the next
12 few questions, I am just going to ask you to turn up those
13 diagrams we were looking at earlier. I guess we can just
14 start with diagram -- these are the diagrams that you
15 provided with your additional information in response to
16 the Board's questions.

17 And we can just start with diagram 1.

18 MR. COOK: We appear to have lost the device that
19 allows that to bring that up on your --

20 MR. MONDROW: Okay.

21 MR. KAISER: We only rented it for the morning.

22 [Laughter.]

23 MR. MONDROW: There's been -- and this is just for my
24 benefit, I think. There has been discussion of luminaires;
25 that is the actual light fixture, I assume, at the top of
26 the pole?

27 MR. COOK: That's correct.

28 MR. MONDROW: So if we look at diagram 1, that's the -

1 - there is a light on the end of a long arm, and the arm
2 gets attached to the pole. And so the luminaire is that
3 arm and the associated light fixture at the end of it. Is
4 that right?

5 MR. COOK: The luminaire is the light fixture at the
6 end of the bracket, that's correct.

7 MR. MONDROW: And by "the bracket" do you mean that
8 long arm that goes from the -- where the lightbulb housing
9 is back to the pole?

10 MR. COOK: Correct.

11 MR. MONDROW: The bracket?

12 MR. COOK: That's the bracket, yes.

13 MR. MONDROW: So I just want to step back for a
14 minute, and Mr. Faye went through this in some detail and I
15 won't repeat it, but I just -- I'll try not to repeat it.
16 I just want to step back to the various components that we
17 have been talking about here today.

18 So the first component of the streetlighting system is
19 the wire that runs from the LDC chamber, and that's the
20 green -- in diagram number 1, which is now on the screen --
21 that's the green wire that runs out of that red box, which
22 is the LDC chamber, and all the way along the three
23 streetlights that are on this diagram?

24 MR. COOK: That's correct. If you are following the
25 cursor, you are referring to this line here?

26 MR. MONDROW: That's right.

27 MR. COOK: Yes.

28 MR. MONDROW: And that's the wire that connects the

1 streetlights on this diagram to the distribution system?

2 MR. COOK: The connection to the distribution system
3 occurs here, in the chamber.

4 MR. MONDROW: Right.

5 MR. COOK: Yes.

6 MR. MONDROW: Oh, right. And the wire is actually a
7 streetlight asset under the current situation.

8 MR. COOK: As it's shown here, yes.

9 MR. MONDROW: As it is shown there.

10 And then the second component of the streetlight
11 system is this -- each of these individual poles. So that
12 is just the stick or the pole that runs up between the
13 ground, and -- and it holds the bracket that you just
14 described a minute ago, Mr. Cook?

15 MR. COOK: Yes.

16 MR. MONDROW: That would be a streetlighting pole; I
17 referred to that.

18 MR. COOK: Yes, it would be.

19 MR. MONDROW: And the -- the wire that actually
20 energizes the lightbulb at the end of that bracket at --
21 where the luminaire is --

22 MR. COOK: For clarity, may I show you this, sir?
23 This is what you mean here? The wire running along this
24 raceway of the bracket --

25 MR. MONDROW: And up?

26 MR. COOK: -- into the --

27 MR. MONDROW: -- the pole?

28 MR. COOK: Into the -- yes, up the pole, along the

1 raceway of the bracket and into the connector block of the
2 luminaire.

3 MR. MONDROW: Right. Okay.

4 MR. COOK: Yes.

5 MR. MONDROW: So we have got the wire from the LDC
6 chamber to the pole. We have got the wire running up the
7 pole and along the bracket, and then we have got the actual
8 bracket and the light?

9 MR. COOK: Correct.

10 MR. MONDROW: And we have the pole?

11 MR. COOK: Correct.

12 MR. MONDROW: I kind of see that as four basic
13 components of the streetlighting system.

14 MR. COOK: Agreed.

15 MR. MONDROW: Okay. And I understand, and you went
16 through with Mr. Faye in some detail a discussion of the
17 wire that runs from the chamber to the pole and why you
18 would want to transfer that and why that is a distribution
19 asset.

20 And many of the USL customers are connected to the
21 wire that goes from that green line running along the
22 street, branches off, and there is a wire running up the
23 pole, and when you connect one of these USL loads, you
24 connect it to some point on that wire running up the pole;
25 is that right?

26 MR. COOK: If you draw your attention to what I have
27 up here right now, sir, is that what you're referring to?

28 MR. MONDROW: Diagram 5, yes.

1 MR. COOK: Yes, that's correct.

2 MR. MONDROW: As I understood it, you can connect that
3 billboard either at the top there of the pole, or sometimes
4 in the handwell on the pole, or sometimes in the well that
5 is on the street, that little red circle?

6 MR. COOK: It would be dependent on the ampacity of
7 the wire how much load it could take.

8 MR. MONDROW: Okay. And so I can understand the logic
9 of all of that wire being a distribution system when you've
10 got a load connected at the end of it.

11 I don't quite understand why the pole is necessarily a
12 distribution asset; that is, an asset used to convey
13 electricity. Can you help me with that?

14 MR. COOK: The pole actually performs the function of
15 a raceway allowing for that conductor to be concealed,
16 going up to the top of the pole in order to feed that USL
17 load.

18 MR. MONDROW: And, sorry, can you clarify why you
19 would have to connect the billboard in this diagram at the
20 top of the pole rather than at that -- I guess that is the
21 handwell that is actually the box on the pole. Is that
22 called the handwell?

23 MR. COOK: The handwell is here, sir, at the base of
24 the pole.

25 MR. MONDROW: Okay.

26 MR. COOK: This is the hand hole of the pole, and the
27 reason that that billboard is connected at the top is it is
28 an overhead service, so a matter of clearance from the

1 ground. That's why we would connect it at the top of the
2 pole to somewhere, to a connection point on the billboard.

3 MR. MONDROW: I see. And what you're saying is you
4 need a physical structure to run that wire up, and you
5 think that should be part of the distribution system?

6 MR. COOK: To run the wire up and also supporting that
7 service; that's correct.

8 MR. MONDROW: Well, when you say "supporting that
9 service", how is that different from running the wire up?

10 MR. COOK: This here, sir, is a service. That wire
11 running at the top of the pole to the billboard is a
12 service.

13 The other wire connection coming up from the bottom of
14 the pole is a feed to bring that power up to that location.

15 MR. MONDROW: And the pole itself is also a service,
16 in your terminology?

17 MR. COOK: No. The pole, sir, serves as two
18 purposes: One, to provide a raceway to bring that
19 conductor up to the top of the pole, and also support that
20 structure or that service wire that's going over to that
21 billboard overhead.

22 MR. MONDROW: Okay. And the bracket and the light
23 fixture at the end of it, why should that be part of the
24 distribution system?

25 MR. COOK: It is typically considered to be part of
26 the distribution system, back when the LDC had it prior to
27 the first transfer to the city. But also you can see -- if
28 I can draw your attention to the next drawing here, you

1 will see that the wire in this case is attached to the pole
2 running from the -- basically the heel bracket or heel
3 plate, which is the base of where the bracket ends and
4 makes contact to the pole.

5 There are occasions where we need to make connections
6 right at the luminaire head and run head to head utilizing
7 that bracket, as well, and that feed from the connector
8 block inside of the fixture in order to provide us
9 temporary means of supplying power.

10 MR. MONDROW: In what situations do you have to do
11 that? In what situations do you have to go to the head
12 rather than the base of the bracket?

13 MR. COOK: Where there is perhaps not exposed. At the
14 heel plate here, the wire would come up directly from the
15 pole in through the bracket itself, with no opportunity to
16 make any connection there, and the only opportunity we
17 would have is accessing the head at the connector block.

18 MR. MONDROW: For those eventualities, you think the
19 bracket should be part of the distribution system?

20 MR. COOK: Yes, sir.

21 MR. MONDROW: Okay. And the lightbulb would that be
22 part of the distribution system?

23 MR. COOK: I believe the purpose of the lightbulb is
24 to actually provide light on the street, sir.

25 MR. MONDROW: Under your proposal, you will actually
26 be providing light, rather than electricity. Your service
27 will be to provide light to the City of Toronto; is that
28 correct?

1 MR. SARDANA: Mr. Mondrow, if I can just add to
2 Mr. Cook's comments something I mentioned earlier today.

3 You know, while the light portion of this construct
4 that you have talked to us about could be construed as a
5 load, and certainly I could agree with that, I think it
6 makes little sense to leave that load piece behind or that
7 small stub piece behind in this whole scheme that we're
8 proposing.

9 It makes complete sense to us to bring the entire
10 asset over, such that it can be served properly.

11 That's really what we're postulating here.

12 MR. MONDROW: Right. So you will be back in your next
13 rate case and you will be asking for a rate for the
14 provision of light?

15 MR. SARDANA: Well, we're going to be asking for a
16 charge for that service, yes.

17 MR. MONDROW: Okay.

18 MR. KAISER: Are there any other cases where you sell
19 a service distinct from simply selling electricity? Would
20 this be the only case where you --

21 MR. COUILLARD: No, Mr. Chair. There is other service
22 we offer as a utility, for example, rubber covers. If you
23 drive in the City of Toronto, sometimes you will see --
24 when there is new construction, you will see these orange
25 things on the wires that protect the wires when there is
26 construction around, so we go and charge customers for that
27 particular thing. And those charges are used as revenue
28 offset.

1 That would be probably the most -- like, the one that
2 we see the most. We also have revenue coming from disposal
3 of all our scrap metals, for example, that are coming from
4 the field. So when the metal prices are up, we make more
5 money. When the metal prices are low, we make less money.
6 And this is also used as a revenue offset for customer
7 rates.

8 MR. KAISER: Well, just to follow up on Mr. Mondrow's
9 question, he's taken you to the end of the bracket, and now
10 we are talking about the little bulb on the end and whether
11 that is a load.

12 MR. COUILLARD: We concede that.

13 MR. KAISER: You agree it is a load. Let's suppose we
14 agree with that. What stops you next from going into the
15 bus shelter business?

16 MR. COUILLARD: Well, I think we're looking at it from
17 the overall asset, what was part of the asset initially and
18 what is actually part of our operation.

19 We obviously -- the maintenance of the lights, for
20 example, is very close to the maintenance of the pole,
21 which is very closely attached, and it is some expertise we
22 have internally. We are obviously not in the business of
23 maintaining or doing any work on phone booths or on bus
24 shelters.

25 So I think that would be the demarcation that, you
26 know, we're doing at this point.

27 MR. LaPIANTA: Mr. Chair, our reason for acquiring the
28 street light assets is, in fact, so we can leverage that

1 electrical infrastructure to help us improve the quality of
2 the distribution system as a whole.

3 A bus shelter in and of itself, a telephone booth in
4 and of itself, offers us no additional value to acquire
5 those assets. I mean, it would just be for the purpose of
6 acquiring the assets. We wouldn't get any value out of
7 them, electrically speaking, and being able to leverage
8 them, improving the overall reliability of the distribution
9 system.

10 MR. KAISER: Let's just focus on that for a moment,
11 because you have agreed that it would be connecting to a
12 load and that would be a departure from the usual rules.
13 And you say the advantage is efficiency.

14 Have you done any analysis of where you could say,
15 Now, listen, Board, if you left this lightbulb out because
16 it was load, and it was left there hanging to be dealt with
17 by somebody else, the extra cost to the system would be X.

18 Do you have any sense of the magnitude of this
19 efficiency gain that you are talking about?

20 MR. COUILLARD: We haven't done any formal analysis.
21 We don't believe that even if we look in the whole scheme
22 of things of the utility, this amount would be hugely
23 material in comparison to all of the utility revenue
24 requirement, for example.

25 For this reason, we believe that just to include it in
26 this number wouldn't make -- you know, wouldn't harm any of
27 the customers. And considering the fact that we have this
28 contract where recovering all of the costs, which is

1 provided as evidence, we didn't believe this would provide
2 -- like, there was not going to be any harm for the
3 customers to do that it that way, but we haven't done any
4 formal analysis, Mr. Chair.

5 MR. QUESNELLE: Just carrying on on that same line,
6 and this goes back to something you said, Mr. Cook, and
7 Mr. Mondrow brought you through all of the possible
8 scenarios of the leveraging, as you have just mentioned,
9 Mr. Couillard, as to leveraging that asset, and you said to
10 better serve the USL customers.

11 And we brought the scenario -- different scenarios
12 right out to the connection block of the luminaire. So
13 beyond that -- which I think demonstrates a leveraging of
14 that asset to service potentially other customers, such as
15 the traffic light or the decorative structure.

16 So at that point, we are now at the connection block
17 to the luminaire. How would you leverage anything beyond
18 that? The actual inner workings of the luminaire, the
19 light itself, is there any potential for leveraging that
20 element of the -- of the streetlighting facility?

21 MR. LaPIANTA: No, sir, not that we are aware of at
22 this point.

23 MR. QUESNELLE: Thank you.

24 MR. LaPIANTA: With one caveat, of course. Again,
25 notwithstanding what may materialize out of the
26 requirements of the Green Energy Act, there may be
27 technologies that at some point may be deployable within
28 the luminaire head. I mean, it is reaching at this point.

1 We are not sure what that is going to bring about, but
2 there is not -- there's not any present application that we
3 are aware of.

4 MR. QUESNELLE: Which may have some utility, but
5 probably not the utility of leveraging the asset to service
6 USL customers?

7 MR. LaPIANTA: Yes.

8 MR. COUILLARD: That's correct.

9 MR. QUESNELLE: Okay, thanks.

10 MR. MONDROW: When in doubt, there is always the Green
11 Energy Act. Sorry. You are not alone.

12 And just to follow -- just to close on this line of
13 enquiry from a -- over the last few minutes, Mr. Cook, I
14 understood you to say that there are situations in which,
15 because you can't connect where the bracket joins the pole,
16 you want to connect where the bracket joins the luminaire
17 or the fixture.

18 Are those -- is that a frequent situation?

19 MR. COOK: Yes, it is.

20 MR. MONDROW: It is. And what causes the inability to
21 connect where the bracket joins the pole? And you may have
22 answered this, but I'm going to ask you to answer it again.

23 MR. COOK: Allow me to show you again, sir.

24 MR. MONDROW: Sure.

25 MR. COOK: I will use this diagram here. This is a
26 case where we do not have any exposed wires at the heel
27 plate, and again, the heel plate would that be mounting
28 component of the bracket that attaches to the actual pole.

1 So if you follow the cursor here, the wire would
2 actually come up from the hand hole all the way up and
3 right through the bracket itself, or -- itself to the head.

4 So we would not be able to make that connection here.
5 This depicts, actually, with the ability that we would have
6 what's called a drip loop or the wire coming actually out
7 of that bracket, exposing itself so that we could make that
8 connection there.

9 MR. MONDROW: You could put a little hole there in the
10 bracket so that you could get at it in -- for future
11 installations, you could make sure that you had access
12 where the bracket joined the pole.

13 MR. COOK: It is a lot more effective, sir, to make
14 the connection up here than it is to drill through that
15 and, you know, suffer some structural integrity to the
16 bracket.

17 MR. MONDROW: Uh-huh. Well, you have a hole lower
18 down in the pole, which was drilled, and is there so you
19 can get in and do stuff with wires, right?

20 MR. COOK: In the hand hole.

21 MR. MONDROW: In the hand hole?

22 MR. COOK: Yes, that's correct.

23 MR. MONDROW: And you could put another hole like that
24 up near the top, presumably?

25 MR. COOK: No, we would not believe able to do that.

26 MR. MONDROW: Why?

27 MR. COOK: Again, we do not want to do anything with
28 respect to the structural integrity of the cement pole. We

1 would void warranty if we were to put -- started bashing
2 holes in the top there to facilitate that.

3 MR. MONDROW: No, but you could order poles with
4 another hole at the top, presumably, for future?

5 MR. COOK: Yeah. We could retrofit a standard.

6 MR. MONDROW: You could retrofit a standard, or you
7 could order a standard with a different configuration?

8 MR. COOK: Going forward, yes, we could.

9 MR. MONDROW: Going forward. Yes, okay.

10 MR. SARDANA: But Mr. Mondrow, isn't it simply just
11 cheaper and more efficient to connect at the head --

12 MR. MONDROW: With the current poles?

13 MR. SARDANA: -- rather than retrofitting or drilling
14 another hole, et cetera?

15 MR. MONDROW: Well, I'm --

16 MR. SARDANA: That is what we're trying to postulate
17 here. It is just simpler. It is more efficient.

18 MR. MONDROW: Okay.

19 MR. RODGER: I don't think the Green Energy Act allows
20 us to drill holes in existing infrastructure.

21 MR. MONDROW: Not yet. There's always the directive
22 power.

23 MR. KAISER: It must, Mr. Rodger. The poles are
24 green.

25 [Laughter.]

26 MR. MONDROW: All right. Sorry I have taken you way
27 off track. Let me just get you back and finish up with my
28 question, so someone else can -- can ask you theirs.

1 There is just one more -- one more little area. You
2 have a separate USL class, a USL class that's separate from
3 your streetlighting class; correct?

4 MR. SARDANA: That's correct.

5 MR. MONDROW: Okay. And Mr. Sardana, you and I had
6 this discussion off the record at the break, and I just
7 want to -- I just want to clarify it for the record.

8 In your evidence, you say that there will be a -- an
9 increase, and I think it is in the range of 2- or 300
10 thousand dollars, at least in the first year after this
11 transaction, if it is approved, consummates, an increase in
12 rates for both streetlighting customers and USL customers.
13 And can you just explain to us why the USL rates should go
14 up as a result of assuming the streetlight system?

15 MR. SARDANA: Again, when we -- when we run through
16 the arithmetic of the revenue requirement consequence of
17 bringing the assets into the new THESL, and then running
18 through, you know, the basic calculations that stem from
19 that -- return, the PILs, OpEx, et cetera -- and when we
20 run through the cost allocation exercise where you have to
21 allocate costs directly to those two classes, the cost
22 responsibility from both those two classes is slightly
23 higher than the revenue requirement -- than the revenue
24 that we collect from those two classes.

25 So the USL class sees a 0.5 percent increase when we
26 run through that arithmetic.

27 MR. MONDROW: And notionally, that is because the USL
28 class would have to pay for these poles, and they're not

1 currently paying for the cost of the pole when the pole is
2 being owned by THESI, or when the pole is owned by
3 THESI?MR. SARDANA: Well, they're not -- they're not paying
4 via the regulated construct today.

5 MR. MONDROW: Right.

6 MR. SARDANA: And when you run it -- run the exercise
7 through the regulated model, that's what comes out.

8 MR. MONDROW: Well, they're not paying any fees to
9 THESI, as I understood your evidence. Isn't that right,
10 gentlemen?

11 MR. COUILLARD: They're not. And I think, you know,
12 what we -- what I would like to remind -- I would like to
13 bring forward here is that if we were to go back and have
14 charged, like, the USL customers, like, you know, the real
15 costs of the connection, if we had done a real connection
16 from THESL LDC secondary, I think the USL customer would
17 have paid way higher rates than they are paying right now.

18 MR. MONDROW: Yes. I am going to leave -- I am going
19 to cede the mic in just a moment. But Mr. Cook, I just
20 want to come back one more time to this diagram. We can
21 use -- diagram number 6, I guess, is up there.

22 When you need to -- in situations where you need to
23 run this overhead wire as -- I think as a temporary fix is
24 the way you have described that, until you get to repairing
25 the underground cable. Let's assume the underground cable
26 becomes part of the distribution system, and that is it.
27 Or maybe add the pole, but not the bracket and the light
28 fixture, just for this scenario. Could you not run that --

1 could you not tap that temporary wire that's out connected
2 to that traffic signal back into the hole on the pole,
3 rather than at the top? So could you not run a wire --

4 MR. COOK: Could I maybe demonstrate --

5 MR. MONDROW: Yeah, please.

6 MR. COOK: -- what I think you're saying?

7 MR. MONDROW: Sure.

8 MR. COOK: This conductor here -- thank you. Sorry,
9 sir. This conductor here you're referring to, rather than
10 making that connection here, you're talking about, I
11 imagine, attaching to the pole and then coming down the
12 outside and making that connection in here. Is that what
13 you're referring to, sir?

14 MR. MONDROW: Yes, and just to clarify, this is on a
15 temporary basis. That's how I understood your answer.

16 MR. COOK: It is a temporary basis, yes.

17 MR. MONDROW: Right. Yes, that's what I'm referring
18 to.

19 MR. COOK: Right, and we consider this to be a much
20 safer application, keeping it out of the public
21 thoroughfare, which, when you bring it down the outside of
22 the pole, it would -- it would put that in the space.

23 So this keeps it right up out of the way.

24 MR. MONDROW: No one can reach it, basically?

25 MR. COOK: Correct.

26 MR. MONDROW: All right. And you could presumably
27 have, in fact you probably do have a joint-use agreement
28 already with THESI, to allow you to tap that wire in where

1 the bracket meets the light fixture, as you have just
2 described would be normally the case. Don't you currently
3 do that? So right now, THESI owns the stuff in green on
4 this diagram, right?

5 MR. COOK: Yes.

6 MR. MONDROW: And right now, you, to service that
7 traffic signal that is stranded at the end of that
8 underground wire that's faulted, you string a wire back and
9 you connect it to THESI's pole. In fact what you're saying
10 is you usually connect it where the light fixture joins the
11 bracket, right?

12 MR. COOK: In this example, yes.

13 MR. MONDROW: Right, and you do that now under a
14 joint-use agreement between THESI and THESL, right?

15 MR. COOK: We don't do it under joint use, no.

16 MR. MONDROW: How do you do it then? Who -- first of
17 all, whose wire is that? Is that the distributor's wire,
18 that red wire up on top?

19 MR. LaPIANTA: That wire belongs to the distributor.

20 MR. MONDROW: Right, and you have no trouble
21 connecting that wire to get that traffic signal running
22 currently, even though the green stuff on this diagram is
23 owned by THESI, right?

24 MR. LaPIANTA: No. That -- in this particular
25 situation, that was considered an emergency. The traffic
26 signals were out.

27 MR. MONDROW: Right.

28 MR. LaPIANTA: And we would -- we would do whatever

1 possible to connect those after --

2 MR. MONDROW: Right, so you don't really need to own
3 that green stuff in order to leverage the system
4 sufficiently to repower that traffic light, do you?

5 MR. LaPIANTA: Again, this is one -- this is only one
6 example. In this particular situation, yes, you're right.

7 MR. MONDROW: What other -- what other examples are
8 there of when you would need to own the bracket and the
9 light standard, other than this example?

10 MR. COOK: That -- that is the example, sir.

11 MR. MONDROW: Okay. Thanks very much.

12 Thank you, Mr. Chair.

13 MR. KAISER: Thank you. Ms. Friedman?

14 CROSS-EXAMINATION BY MS. FRIEDMAN:

15 MS. FRIEDMAN: I am just going to ask one question to
16 follow up on what Mr. Mondrow was asking and Mr. Quesnelle
17 raised about this luminaire at the end.

18 Mr. Quesnelle had you speak to the fact that if you
19 acquired ownership of the luminaire, you're not necessarily
20 leveraging to the overall improvement of the distribution
21 system.

22 I think that is what you said. But I take it once
23 your people are up there maintaining the wires, they're
24 electricians and they can change a lightbulb; correct?

25 MR. COOK: That's correct.

26 MS. FRIEDMAN: So Mr. Sardana, I think you were the
27 one talking about overall efficiency. So is the argument,
28 then, it is just overall more economically efficient to

1 have one crew that's already up there doing it?

2 MR. SARDANA: That's absolutely correct.

3 MS. FRIEDMAN: Okay. Thank you. That is all of my
4 questions.

5 MR. KAISER: Thank you. Mr. DeVellis.

6 **CROSS-EXAMINATION BY MR. DEVELLIS:**

7 MR. DeVELLIS: Thank you, Mr. Chairman.

8 Good afternoon, panel. As Mr. Faye promised you, I am
9 going to ask you about the valuation or the proposed
10 valuation of the streetlighting assets in THESL.

11 In your application, what you said I guess is the
12 streetlighting assets are going to go into rate base, in
13 THESL's rate base, at the net book value of \$66 million; is
14 that correct?

15 MR. COUILLARD: I think it is around 60 -- maybe about
16 66 at the end of May. I think it is a bit lower right now.

17 MR. DeVELLIS: Right. I think you said there will be
18 some adjustments, but it is whatever the net book value is
19 as of January 1st?

20 MR. COUILLARD: We did net book value at the date of
21 transaction.

22 MR. DeVELLIS: In one of our interrogatories - I don't
23 think you have to turn it up, it was Exhibit F, tab 22,
24 schedule 4 - we asked you for a fixed asset continuity
25 schedule for the assets from the time they were transferred
26 out of the regulated utility until 2009, from 1988 to 2009.

27 And all you said to us is that information is not
28 available.

1 MR. COUILLARD: Yes. We only have the information
2 from 2005 when we reacquired the assets, from 2005 to
3 2009. From 1998, we don't have the information, like,
4 whatever the city was -- and I think I just want to
5 clarify. City accounting is quite different. They don't
6 treat things as fixed assets with amortizations and things
7 like that, so it is a different type of accounting than we
8 would do.

9 I would say that we use the normal world when we do on
10 a private company or...

11 MR. DeVELLIS: Okay. All right. So maybe we can then
12 turn to the interrogatory response to Energy Probe, and
13 that is schedule -- section F, tab 19, schedule 1, page 2.

14 MR. LaPIANTA: Schedule 2?

15 MR. DeVELLIS: Schedule 1, page 2, THESI fixed asset
16 continuity schedule.

17 MR. COUILLARD: Yes.

18 MR. DeVELLIS: You have an opening balance of
19 \$60 million 2006 actual?

20 MR. COUILLARD: Yes.

21 MR. DeVELLIS: Okay. Then it stops at 2008, but if we
22 were to continue that to 2009, we would eventually get to
23 66 million?

24 MR. COUILLARD: It would be closer to 62-1/2.

25 MR. DeVELLIS: Sorry, 62-1/2. So the opening balance
26 of 60 million, can you tell me what that is based on?

27 MR. COUILLARD: It's based on the valuation that was
28 done when we acquired the asset from the city.

1 MR. DeVELLIS: You mean THESI's valuation?

2 MR. COUILLARD: Correct.

3 MR. DeVELLIS: Is that in evidence?

4 MR. COUILLARD: No.

5 MR. DeVELLIS: Okay. Can that be produced?

6 MR. COUILLARD: We can't produce that. It is a
7 confidential document prepared by Deloitte & Touche, and
8 Deloitte has refused to let us release this document.

9 MR. DeVELLIS: Even on a confidential basis?

10 MR. COUILLARD: Even on a confidential basis.

11 MR. DeVELLIS: So how is the -- I assume that THESL,
12 the regulated company - I haven't seen it in evidence -
13 hasn't done its own valuation of the assets as of 2009, or
14 has it?

15 MR. COUILLARD: No, we have not.

16 MR. DeVELLIS: So your valuation is based entirely --
17 well, you called it net book value, but, in reality, it is
18 based on the valuation that was done by Deloitte & Touche
19 in 2005?

20 MR. COUILLARD: It is based on a transaction,
21 actually, not a valuation. There was a transaction that
22 was done in 2005 when these assets were purchased from the
23 city, and the purchase price was \$60 million.

24 MR. DeVELLIS: Okay. Right. But, in essence, the
25 opening -- the starting point is not -- you have called it
26 net book value, which would assume sort of a continuity
27 schedule, and you could see the additions and depreciation
28 over time, but really what it is is you are starting at a

1 value of \$60 million, which is an externally generated
2 number, essentially, from Deloitte & Touche?

3 MR. COUILLARD: I disagree with you, Mr. DeVellis,
4 because this is -- the net book value has actually been
5 accepted by our auditors as being the value of the assets.
6 We have a clean audit opinion and they have agreed on the
7 value, and then the split that was done between the
8 different categories of assets.

9 So there is a transaction supporting this value.
10 Ernst & Young, our auditors, have signed off on this as
11 being the net book value.

12 MR. DeVELLIS: Well, you said you can't produce the
13 report from Deloitte. How is this Board supposed to
14 satisfy itself that the value that you placed or that THESI
15 placed on the asset in 2005 is what, when you flow that
16 through to 2009, should be the net book value that should
17 be included in your rate base in 2010?

18 MR. RODGER: Perhaps I could address that, since it
19 goes to the legal test. And, Mr. Chairman, this issue
20 about the price paid for a transaction that comes before
21 this Board in terms of a section 86 application, a merger
22 amalgamation, this has come up in many cases in the past.

23 The other night when I was reviewing the no harm test,
24 the case I pulled also dealt specifically with this issue,
25 and if I could just reference you to it.

26 It was dated August 31st, 2005. It was EB-2005-0234.
27 And you were the presiding member, Mr. Kaiser, on that
28 hearing. This involved an acquisition of Veridian of the

1 local distribution company in Gravenhurst.

2 And on page 7 of the decision, there is a title, "The
3 Relevance of Price and Process".

4 And it just starts off by saying that the parties were
5 asked to comment whether the Board, in determining the
6 applications under section 86 of the Act, should consider
7 the price that has been negotiated or the process by which
8 both the price and the transaction terms were arrived at.

9 At the bottom of page 7, your decision is as follows,
10 under the "price" heading:

11 "The Board is of the view that the selling price
12 of a utility is relevant only if the price paid
13 is so high as to create a financial burden on the
14 acquiring company which adversely affects
15 economic viability as any premium paid in excess
16 of the book value of assets is not normally
17 recoverable through rates. This position is in
18 keeping with the no harm test. By contrast the
19 fact that the selling entity may have received
20 too low a purchase price for the utility would
21 not be relevant to the outcome of the proceeding
22 on the basis of the no harm test. The fact that
23 the seller could have received a higher price for
24 the utility, even if true, would not lead to an
25 adverse impact in the context of the objection
26 set out in section 1 of the Act."

27 So I suggest to you, sir, that the road my friend is
28 going down really is irrelevant and you have decided that

1 in other cases. The issue here is the no harm test in the
2 context of the section 1 objectives of the Act, not the
3 price paid or the process by which it came to be acquired.

4 MR. KAISER: Mr. DeVellis, are you trying to determine
5 or verify what the net book value is?

6 MR. DeVELLIS: Yes. Well, my question is how the
7 utility determined the net book value. I haven't had a
8 chance to review Mr. Rodger's authority there, but it
9 sounded like what he was saying is the opposite of what I
10 am trying to establish.

11 MR. KAISER: He was referring to a situation where we
12 weren't concerned about the premium over net book value.

13 Your question I thought was different. You wanted to
14 know how the net book value had been calculated.

15 MR. DeVELLIS: That's correct. We don't have any
16 evidence of how the net book value was calculated.

17 MR. KAISER: Well, it started at 60, which was an
18 actual transaction price, as I understand it, and then --
19 which Ernst & Young apparently verified with some audit
20 opinion and accepted that as net book value; is that
21 correct?

22 MR. COUILLARD: That's correct, Mr. Chair.

23 MR. KAISER: Then we have some intervening years, and
24 Deloitte comes into the picture and they bump it up by some
25 amount. Your question is: How did they calculate the
26 bump-up? Is that it?

27 MR. DeVELLIS: Well, my question originally was how
28 you get to the \$60 million, since that is the starting

1 point for our analysis.

2 MR. KAISER: We do know the 60 million was the actual
3 transaction price, and it was an arm's-length transaction,
4 I think, wasn't it?

5 MR. COUILLARD: Mr. Chair, if I may just respectfully
6 clarify, Deloitte didn't bump up the transaction. Deloitte
7 provided a valuation at the time of the transaction when we
8 purchased the assets from the city.

9 MR. KAISER: Oh, I see.

10 MR. COUILLARD: And supporting the purchase price, and
11 then -- which led to the transaction that we had with the
12 City of Toronto for \$60 million. And the valuation of
13 \$60 million has been accepted for tax purposes, for
14 example. We actually got an opinion from the Ministry of
15 Finance regarding the valuation that is used for CCA
16 purposes, which, if it had been the case that there would
17 have been, like, a bump-up, for example, in the value,
18 there is no doubt we would have had a problem with the
19 Ministry of Finance.

20 MR. KAISER: I am a bit confused why Deloitte's would
21 be worried about the Board seeing this on a confidential
22 basis.

23 I am not clear that it is necessary here, but we are
24 generally pretty reluctant not to look at data like this,
25 at least on a confidential basis. This is an old
26 transaction. It is history. What is the big deal?

27 MR. COUILLARD: Obviously, I am not sure I understand
28 all of the scintilla of the legalities behind --

1 MR. KAISER: Is it just that they take the view that
2 anything they do for you can't be filed with the Board
3 under any circumstances?

4 MR. COUILLARD: I think it doesn't limit it to the
5 Board. I think it limits it to other things. We have been
6 asked before to produce this valuation under other
7 circumstances, and they have objected to us.

8 MR. KAISER: The -- you did say that Ernst & Young had
9 accepted this in some form of audit?

10 MR. COUILLARD: Well, we have got audit opinions for
11 the last, like, three years since 2000 -- since we
12 purchased the assets in '05.

13 MR. KAISER: Did the audit cover this? I mean did --

14 MR. COUILLARD: Yes.

15 MR. KAISER: Do you have an opinion that this
16 represents net book value?

17 MR. COUILLARD: We have an opinion from Ernst & Young
18 every year that the overall financial statements of Toronto
19 Hydro Energy Services are correct, which includes the net
20 book value. I mean it is the main asset in the company.

21 MR. KAISER: Well, Mr. DeVellis, if they give you
22 that, is that satisfactory?

23 MR. COUILLARD: It is actually in the evidence.

24 MR. DeVELLIS: Sorry, you said that was in evidence?

25 MR. COUILLARD: It's in evidence. The Toronto Hydro
26 Energy Services financial statements have been filed in
27 evidence.

28 MR. DeVELLIS: Well, let me ask you this.

1 It's my understanding that the City of Toronto was
2 recently ordered to produce, pursuant to an information and
3 privacy request, certain -- or I don't know what documents,
4 but certain documents relating to the 2005 transaction with
5 THESI. Are you familiar with that?

6 MR. COUILLARD: I am aware that a decision was
7 rendered last week. I am not aware of all of the details
8 around this decision.

9 MR. DeVELLIS: Okay. And would -- do you know whether
10 the Deloitte opinion would be included in that batch of
11 documents?

12 MR. COUILLARD: I do not know.

13 MR. DeVELLIS: Okay. Well, then, perhaps if it is and
14 if -- if the city is being ordered to produce that document
15 anyway under the information and privacy request, then
16 perhaps I can alter my request to produce it in this
17 proceeding as well, if you -- or if the city has to produce
18 the document in any event.

19 MR. COUILLARD: I have no objection to that,
20 Mr. DeVellis, but I just want to remind this valuation was
21 not addressed to the City of Toronto. It was addressed to
22 Toronto Hydro. Like, the city, to my knowledge, has never
23 received the valuation.

24 MR. DeVELLIS: Okay.

25 Okay, well, I mean still, if this is one of the
26 documents that's produced, then you'll produce it here?

27 MR. COUILLARD: Yes.

28 MR. RODGER: I wonder if we could ask if Mr. Blue has

1 any information on this, since it's his -- it would be his
2 client that the order was directed against.

3 MR. KAISER: Mr. Blue, do you want to weigh in on
4 this?

5 MR. BLUE: Mr. Chairman, my understanding is that the
6 Freedom of Information Request was with respect to the
7 street and expressway lighting service agreement, which
8 Mr. -- Toronto Hydro and the city both agreed it should be
9 filed in this hearing, and it is filed.

10 MR. KAISER: All right.

11 MR. BLUE: The city may not have informed the Privacy
12 Commissioner about that.

13 MR. DeVELLIS: Okay. I think I will move on, then.

14 I want to ask you about the -- what you have called
15 the deficiency resulting from the transaction, in terms of
16 your -- in new THESL. And there's two documents I want to
17 ask you about. One is an interrogatory response to Schools
18 at Exhibit F, tab 22, number 2.

19 MR. SARDANA: Yes.

20 MR. DeVELLIS: And the other is your NewCo income
21 statement for the period ended December 31st, and that is
22 at section E, tab 16 of your application.

23 MR. SARDANA: Okay.

24 MR. DeVELLIS: Updated October 1st, 2009.

25 MR. SARDANA: Okay.

26 MR. DeVELLIS: Now, these -- these two schedules seem
27 to be the same. The different -- now, the table in the
28 interrogatory response shows a deficiency of about

1 \$350,000, and that is because this is on a rate-regulated
2 basis; is that correct?

3 MR. SARDANA: That's correct.

4 MR. DeVELLIS: Okay.

5 MR. SARDANA: I should also just clarify for the
6 record that table 1 refers to "dollars millions." It
7 should be "dollars thousands."

8 MR. DeVELLIS: Okay. Well, that's -- that's
9 comforting.

10 MR. SARDANA: It is a really big streetlighting
11 company.

12 MR. DeVELLIS: Okay. And so the -- when you look at
13 the total cost administration and your OpEx number, those
14 numbers are both the same in both -- both schedules, the
15 5.9 million?

16 MR. SARDANA: Correct.

17 MR. DeVELLIS: Okay. And now -- well, let me -- the
18 income statement that is at section E, tab 16, that is the
19 streetlighting pre-amalgamation income statement?

20 MR. SARDANA: The top box on the blue pages that
21 you're referring to? Yes, that looks like the income
22 statement for just the streetlighting company.

23 MR. DeVELLIS: Okay. So when you have \$5.9 million
24 there, that is prior to -- that wouldn't include OM&A that
25 is currently in your distribution business related to
26 streetlighting, or that is allocated to streetlighting?

27 MR. SARDANA: This is the operating expenditure just
28 for the streetlighting entity.

1 MR. DeVELLIS: Right, okay.

2 And what you have called revenue offset in the table
3 in the interrogatory response, the 17.087 million - or,
4 sorry, the 17.1 million?

5 MR. SARDANA: Yes, that's correct.

6 MR. DeVELLIS: Is that a combined revenue or is that
7 just the streetlighting revenue?

8 MR. SARDANA: That's the combined revenue. So it's
9 the city service agreement revenue stream, along with the
10 revenue stream from other entities that connect to the
11 streetlighting system that we mentioned earlier, the police
12 board, et cetera.

13 MR. DeVELLIS: Okay. So that would not include what
14 is currently distribution revenue derived from
15 streetlighting in the -- in the utility?

16 MR. SARDANA: No. That's -- that's right.

17 MR. DeVELLIS: All right. Okay.

18 And -- and then, as we said, there is a \$350,000
19 deficiency. And you may have answered this already, but
20 your plan is to allocate that deficiency directly to the
21 streetlighting --

22 MR. SARDANA: And USL --

23 MR. DeVELLIS: -- and USL rate classes?

24 MR. SARDANA: Correct.

25 MR. DeVELLIS: All right. And the -- those rate
26 classes currently have a revenue-to-cost ratio of less than
27 one, of course?

28 MR. SARDANA: That's correct.

1 MR. DeVELLIS: Okay. So how would that deficiency,
2 then, be collected?

3 MR. SARDANA: So, again, Mr. DeVellis, as I mentioned,
4 we haven't gone through the full cost allocation exercise,
5 because that -- that modelling exercise takes some time.

6 However, we have done a high-level estimate. So in
7 our EDR -- 2010 EDR filing, the revenue-to-cost ratios that
8 have been proposed for the streetlighting and USL classes
9 are 70 percent and 80 percent respectively, both of which
10 conform completely to the Board's guidelines.

11 This transaction, if it is approved, and based on the
12 numbers that we have mentioned or noted earlier today, will
13 have the result of moving the streetlight class up to about
14 0.8 or 80 percent to -- revenue-to-cost immediately.

15 And again, that is just the arithmetic, because you
16 are adding to the denominator and the numerator, et cetera.

17 MR. DeVELLIS: So you are essentially adding the
18 350,000 to whatever revenue you would have collected
19 anyway?

20 MR. SARDANA: Yes.

21 MR. DeVELLIS: From streetlights.

22 MR. SARDANA: That's right.

23 MR. DeVELLIS: Okay, so -- but you are not - you're
24 not doing a sort of fully cost-allocated --

25 MR. SARDANA: No.

26 MR. DeVELLIS: You're not making through that 100
27 percent, including this deficiency?

28 MR. SARDANA: That's right. Our proposal was never to

1 move the streetlight class to unity in one fell swoop.

2 However, having said that, it is our intent -- as the
3 Board has guided -- that all classes will go to a revenue-
4 to-cost ratio of unity over time. And that is still the
5 intention here. With or without this transaction, the
6 streetlight class would have gone to unity over time.

7 MR. DeVELLIS: Okay.

8 MR. SARDANA: As the USL would have done, as well.

9 MR. DeVELLIS: And you don't -- under your proposed
10 structure, you don't propose that the Board would be
11 regulating the streetlighting revenue from the City of
12 Toronto?

13 MR. SARDANA: Well, we're proposing in the immediate
14 phase, at least, that it be treated as a revenue offset.
15 So the entire revenue stream that comes in from the city
16 would be treated as a revenue offset. I think it is fair
17 to say that going forward, depending on negotiations that
18 we might have with the city and as we continue to integrate
19 the streetlight company more fully into the distribution
20 system operations, we could conceive of a situation where
21 there is a separate -- there is a streetlight rate class
22 which has the distribution costs, and then a maintenance
23 service rate charge. I think that is quite conceivable, as
24 well.

25 MR. DeVELLIS: Would that be regulated by the Board?

26 MR. SARDANA: I think it would go -- it would
27 absolutely fall within the Board's ambit to regulate that,
28 because we would come before the Board, as we do for our

1 cost of service, and that would form part of that cost-of-
2 service exercise.

3 MR. DeVELLIS: Okay. Now, in your cost-of-service
4 evidence for the 2010 rate filing, there's some references
5 to the streetlighting application -- or not the
6 application, but the streetlighting assets and certain work
7 that needs to be done.

8 And I would just like to ask you some of them. You
9 have in your capital budget \$5.2 million for upgrading
10 streetlighting cable. Are you familiar with that? Maybe
11 Mr. LaPianta would be.

12 MR. LaPIANTA: No, unfortunately I'm not. I am not
13 familiar with that portion of the application.

14 MR. DeVELLIS: Okay. Is anybody on the panel?

15 MR. SARDANA: You know, I -- I don't profess to be
16 able to speak to that but, you know, we are going to be
17 appearing before the Board in a scant two months, and we
18 will gladly take you through all of that.

19 MR. DeVELLIS: Okay. Let me ask you another one,
20 then. This is an operating expense; this is Exhibit F1,
21 tab 1, schedule 3 of your -- no, no, not here. In your
22 streetlighting -- in your cost-of-service evidence. You
23 have a \$2.3 million increase in cost relating to the
24 streetlighting verification program, in preparation for the
25 transfer of streetlight assets to THESL. Are you familiar
26 with that?

27 MR. SARDANA: Again, Mr. DeVellis, it's been a few
28 weeks since I've looked at the -- that evidence in detail.

1 I can't speak to it today.

2 MR. DeVELLIS: Okay. So the items I just mentioned,
3 though, that would not be included in the 5.9 million we
4 were looking at earlier in this schedule?

5 MR. SARDANA: Subject to check, I don't believe so.

6 MR. DeVELLIS: So there would be costs to the
7 distribution system, assuming they're related to the
8 transfer, but costs to the distribution system relating to
9 the transfer, not costs related that already exist in the
10 streetlighting entity?

11 MR. SARDANA: Again, Mr. DeVellis, I am having
12 difficulty answering your questions fairly, because I
13 haven't looked at that evidence recently. So I would have
14 to look at the evidence, and then -- to be able to answer
15 that.

16 MR. DeVELLIS: Okay. Well, maybe you could do a
17 reconciliation for us and tell us what costs to the
18 distribution system that are currently in your cost of
19 service evidence that are related to the transfer of the
20 streetlighting assets.

21 MR. KAISER: Put differently, are there any costs of
22 this transaction, whether they're in your rate application
23 or not --

24 MR. SARDANA: No, Mr. Chair.

25 MR. KAISER: -- that have not been disclosed?

26 MR. SARDANA: No, Mr. Chair. There are no
27 relationship with the costs that are in our 2010
28 application versus those costs. There is no duplication or

1 there is no attempt on our side to collect costs here and
2 collect costs on the other one.

3 MR. SARDANA: If I can add to that, I would think that
4 the evidence that we have in our 2010 application has to do
5 more with continuing to service the secondary asset, from a
6 contact voltage perspective, and making the system safe
7 from that side, not so much to have anything to do with
8 this transaction.

9 MR. KAISER: Maybe you can verify that. I think our
10 only concern would be obviously if there were costs of this
11 transaction that are not before us.

12 MR. COUILLARD: We will be happy to take an
13 undertaking, Mr. Chair.

14 MR. KAISER: Does that help, Mr. DeVellis?

15 MR. DeVELLIS: Yes, thank you.

16 MS. COCHRANE: That will be undertaking J1.3, and can
17 we just repeat it for the record?

18 **UNDERTAKING NO. J1.3: TO ANALYZE THE DISTRIBUTION**
19 **COSTS RELATED TO THE STREET LIGHT TRANSACTION.**

20 MR. DeVELLIS: That is to analyze the distribution
21 costs related -- that are related to the street light
22 transaction.

23 MS. COCHRANE: Thank you.

24 MR. QUESNELLE: Mr. DeVellis, would you mind if I
25 interrupt to pick up on a point that Mr. Sardana just
26 raised?

27 MR. DeVELLIS: Please.

28 MR. QUESNELLE: I wonder if you could expand on it,

1 Mr. Sardana.

2 It was the notion that you said of there being a
3 separate maintenance charge for -- related to street lights
4 and that, in the future, you could conceive of a situation
5 where there would be distribution system costs which would
6 form part of the cost allocation and supporting the rates
7 for this class.

8 What would you envision would be -- that a separate
9 maintenance cost of distribution assets would encompass?

10 MR. SARDANA: So all I was getting at is today we
11 charge distribution rates to the street light and USL
12 classes, and that is billed to the City of Toronto, and
13 that's charged out of the distribution company today.

14 And then separately, TH Energy collects a revenue
15 stream from the city, and that assists with them running
16 that business.

17 If this transaction is obviously folded all into one
18 distribution company, that contract will exist still. We
19 likely will have to find a way to deal with that contract
20 in one way, shape or form. Again, there are several
21 scenarios that could play out.

22 One scenario is, of course, that the revenue stream
23 continues as it does today, except it now goes to the New
24 THESL, for lack of a better term, and then it is treated as
25 a revenue offset and the distribution costs are still
26 charged as they are today. There is no change, in other
27 words. It is just that the revenue stream is diverted to
28 the New THESL.

1 Scenario two along the road is that, well, you could
2 still have a distribution charge as you do today, but
3 instead of this revenue stream being, you know, paid from
4 the city per the contract, you could instead say, Okay,
5 well, fine, we're going before the Board to get all rates
6 and charges set by the Board. You could now change that
7 revenue stream and set it as a rate charge, a specific
8 charge, that we would then cost to those two rate classes.

9 So it was just a shift in structure.

10 MR. QUESNELLE: So in the near term, then, before you
11 get to the second one you mentioned as an evolutionary
12 step, do you consider that, what you were calling a
13 maintenance charge, to be a miscellaneous charge in your
14 rate tariff? Is that how you would --

15 MR. SARDANA: No. Again, I was envisioning a full
16 cost of service underneath it that would then say, Here are
17 the services that make up that charge.

18 MR. QUESNELLE: That would be the ultimate end state?

19 MR. SARDANA: That's right.

20 MR. QUESNELLE: But in the meantime -- because I had
21 envisioned us getting there very quickly, but you are
22 suggesting that -- that's where I lost you. There would be
23 a notion of there being two parts to a distribution charge,
24 because maintenance for streetlighting, in my mind, would
25 be part of what makes up the distribution charge.

26 If all assets are distribution assets, maintaining
27 some of them or all of them are all part and parcel of the
28 same concept.

1 MR. SARDANA: Right. I would agree with that, too. I
2 think I was just trying to find a convenience as an interim
3 step where you could conceive of this. But I think
4 eventually, yes, you would have one distribution charge for
5 the street light and USL classes. That would make sense to
6 me, as well.

7 MR. QUESNELLE: Okay, thank you.

8 MR. DeVELLIS: Thank you.

9 MR. RODGER: Mr. Chairman, I wonder if I might clarify
10 the undertaking, because what I wrote down -- what I
11 thought was the undertaking was different than what was
12 recited.

13 Could I have the language again, please? I just want
14 to make sure we are on the same page.

15 MS. COCHRANE: Panel, what I got was undertaking J1.3
16 is to analyze the distribution costs related to the
17 streetlighting transaction.

18 MR. RODGER: I had in my notes to identify the
19 distribution costs of the transaction that were not before
20 the Board. The first one just seems to be very, very broad
21 and I'm just not sure --

22 MR. KAISER: I think it was just that, correct me if I
23 am wrong, Mr. DeVellis, but you wanted to be assured that
24 those costs, which you had on your -- you had discovered in
25 their application --

26 MR. DeVELLIS: Right.

27 MR. KAISER: -- were not related to this transaction;
28 i.e., they might be related to something else. I think

1 there was a suggestion they might be related to this
2 emergency situation they had this winter, et cetera.

3 MR. DeVELLIS: No. What I wanted to know is which of
4 those costs are related to those transactions, to identify
5 those and put those before this Board so that this Panel
6 can evaluate them.

7 MR. KAISER: Right. I think the witnesses understand,
8 Mr. Rodger. They will say they are related or they're not
9 related; and if they are related or some of them are
10 related, which ones are related and how much.

11 MR. COUILLARD: Correct.

12 MR. KAISER: Mr. DeVellis, would this be a convenient
13 time to take the break, or are you just about finished.

14 MR. DeVELLIS: I have one last area of questions, but
15 if you want to take the break, that's fine.

16 MR. KAISER: Whatever suits you.

17 MR. DeVELLIS: We will take a break.

18 MR. BLUE: Mr. Chairman, when we return, I have a
19 matter to raise.

20 MR. KAISER: All right. Thank you.

21 --- Recess taken at 2:58 p.m.

22 --- Upon resuming at 3:24 p.m.

23 MR. KAISER: Please be seated.

24 Mr. Blue, you had a preliminary matter?

25 MR. BLUE: I did, sir.

26 **PRELIMINARY MATTERS:**

27 MR. BLUE: It is really two parts. Part one is I
28 wanted to just enter a caution with respect to an agreement

1 that has been filed by Toronto Hydro. This is the
2 indemnity agreement, which is the part A to the response to
3 Energy Probe Research Foundation's Interrogatory No. 4. It
4 is also section F, tab 19, schedule A, appendix A. But in
5 any case, I won't go into why I have a caution.

6 I had received an e-mail from my clients asking me to
7 speak to it, and they will get me instructions to address
8 it overnight, one way or the other. The concern is that
9 certain portions of it are very sensitive, and we, the city
10 might be seeking confidentiality with respect to it, or may
11 be.

12 Part two, sir, is this: Arising out of the questions
13 that have been asked by my friends, I would ask leave of
14 the Board to ask one question only of the panel. This is
15 not something that I could have anticipated before I
16 completed my questioning, and it has arisen from their
17 questions.

18 MR. KAISER: That's fine.

19 Mr. Rodger, before we proceed back to Mr. DeVellis, a
20 couple of points. Point number one is on this Deloitte
21 study that underpins the \$60 million price that was fixed
22 some years ago, the Board would like to see that in
23 confidence. So if you can see if you can talk to your
24 clients, and more importantly, talk to Deloitte. You can
25 explain the procedure to them, and we will deal with it
26 further, if we have to.

27 And I think what we're going to do today -- I
28 understand Mr. Rodger has a commitment somewhere else.

1 Board counsel would like the evening to collect their
2 thoughts and go through the previous questions. So we will
3 try and finish with the intervenors today.

4 I don't know how much you have, Mr. Buonaguro.

5 MR. BUONAGURO: Oh, not much; 10, 15 minutes.

6 MR. KAISER: So we will do that and reconvene on
7 Thursday morning, at the usual time, I believe.

8 And in terms of argument, I think we would like to
9 hear from you, Mr. Rodger, Thursday afternoon, orally. We
10 would then accept written reply argument from the
11 intervenors. And in terms of your reply, we may ask you to
12 come back, or we may be content with oral -- written
13 reply. And I only say that because the Board Panel may
14 have some questions of you that we would like to clarify
15 right up front before the intervenors file their written
16 argument, if that is acceptable.

17 MR. RODGER: That's fine, sir.

18 MR. KAISER: So let's -- Mr. DeVellis, you're -- you
19 had some more, I think?

20 MR. DeVELLIS: Yes, yes. Just a few more minutes.
21 Thank you, Mr. Chairman.

22 I just want to get back to the issue of the Deloitte
23 study. I know that the Chair has already asked you to
24 provide it. I just wanted to get one point on the record,
25 more for you to comment, since I won't -- likely won't have
26 another chance to ask you about this.

27 And that is that section, it has to do with
28 interrogatory response at -- to Schools at section F, tab

1 22, schedule 5.

2 We had asked you to explain how a value or net book
3 value or otherwise was determined for the streetlighting
4 assets, and your response at part A was:

5 "The initial valuation performed when THESI
6 purchased the assets from the city was based on a
7 discounted cash flow model derived from the
8 expected revenue associated with a 30-year
9 service agreement signed between THESI and the
10 City of Toronto."

11 So I just put this to you, just for your comment.
12 That sounds -- that doesn't sound like a net book value
13 analysis to me. It sounds more like a market value
14 analysis of the asset.

15 MR. COUILLARD: Well, I think in the -- the discounted
16 cash flow assessed a value of the assets, which -- and then
17 after that, turned into the net book value of the asset,
18 and was endorsed by Ernst & Young.

19 MR. DeVELLIS: Okay.

20 MR. KAISER: Before you proceed, do we have the 30-
21 year contract in the record?

22 MR. COUILLARD: Yes. It is filed as evidence.

23 MR. KAISER: Does that set out the pricing -- I
24 haven't looked at it. Does it set out the pricing
25 mechanism over that term?

26 MR. COUILLARD: Yes, Mr. Chair.

27 MR. KAISER: Thank you.

28 MR. COUILLARD: section F, tab 19, schedule 4,

1 appendix E.

2 MR. KAISER: All right. Thank you.

3 MR. DeVELLIS: Now, just with respect to the Deloitte
4 -- I am just wondering about the timing of the -- we don't
5 know if it is going to be produced or when, but we will
6 have it on Thursday in case people have questions on it,
7 and we can ask questions in confidence.

8 MR. KAISER: Well, Mr. Rodger is going to check with
9 Deloitte and he will let us know as soon as he can.

10 MR. DeVELLIS: Okay. Thank you.

11 MR. KAISER: He will send us a letter tomorrow, I'm
12 sure, and advise us what the status is. And we can deal
13 with it Thursday morning.

14 MR. DeVELLIS: Thank you. Now, just one last area of
15 questions. It has to do with the assumption of liabilities
16 by THESL under the current Asset Purchase Agreement.

17 And that is in your evidence at tab 7, section C, tab
18 7. And could I ask you to turn to section 3.1? I believe
19 the Chairman referred you to this, or referred Mr. Rodger
20 to this earlier.

21 MR. COUILLARD: section -- sorry, Mr. DeVellis, the
22 section?

23 MR. DeVELLIS: 3.1 of the Asset Purchase Agreement, on
24 page 7. Do you have that?

25 MR. SARDANA: Yes.

26 MR. DeVELLIS: Okay. And what that says is:

27 "Subject to the provisions of this agreement, the
28 purchaser agrees to assume, pay, satisfy,

1 discharge, perform and fulfil, from and after the
2 closing date, all of the obligations and
3 liabilities, contingent, accrued, present and
4 future, related to the SEL business, including
5 those liabilities under all contracts related to
6 the SEL business, including the city agreements
7 and liabilities which are specified in Schedule
8 3.1."

9 So have I read that correctly?

10 MR. SARDANA: Yes.

11 MR. DeVELLIS: Okay. So as I read it, that is an all-
12 encompassing assumption of liability; all of the
13 liabilities, contingent, accrued, present and future of the
14 streetlighting business are -- are being assumed by THESI?

15 MR. SARDANA: Yes. At the time of the agreement,
16 that's right.

17 MR. DeVELLIS: Okay. And can I ask you to turn, then,
18 to the -- the Asset Purchase Agreement, the 2005 Asset
19 Purchase Agreement between THESI and the City of Toronto?
20 That's at -- sorry, that is at section F, tab 21, schedule
21 12, appendix A.

22 MR. COUILLARD: Sorry, Mr. DeVellis. Is it the same
23 agreement? Because that's what we're looking at right now,
24 the Purchase Agreement between the City of Toronto and
25 THESI.

26 MR. DeVELLIS: No. The one we were just looking at?

27 MR. COUILLARD: Yes.

28 MR. DeVELLIS: Between NewCo and Toronto Hydro-

1 Electric Services Inc., so that is --

2 MR. COUILLARD: My apologies.

3 MR. DeVELLIS: So that is the current Asset Purchase
4 Agreement. I want to refer you to the old or the previous
5 Asset Purchase Agreement. And that is in a response to
6 Electrical Contractors' Association, section F, tab 21,
7 schedule 12, appendix A.

8 And it's the same section, 3.1; it's on page 10.

9 MR. SARDANA: Yes, sir.

10 MR. DeVELLIS: Okay. Do you have that, section 3.1 on
11 page 10? And I will read that to you, as well. And that
12 is the assumption of certain liabilities by the purchaser,
13 the purchaser being THESI, in this case; correct?

14 MR. COUILLARD: Yes.

15 MR. DeVELLIS: And it says:

16 "Subject to the provisions of this agreement, the
17 purchaser agrees to assume, pay, satisfy,
18 discharge, perform and fulfil from and after the
19 effective date only those obligations and
20 liabilities which are specified in Schedule 3.1."

21 And that's the assumed liability, and then there is a
22 list of liabilities similar to the one that is in the
23 current Asset Purchase Agreement.

24 MR. COUILLARD: That's correct.

25 MR. DeVELLIS: Okay. So that is a much -- and then in
26 3.2, we have excluded liabilities, and there's a whole list
27 of -- for greater certainty, it says, there is a whole list
28 of excluded liabilities, which THESI was not assuming.

1 And so that appears to me to be a much more
2 restrictive assumption of liability clause than the one
3 that THESL has agreed to in the current asset purchase
4 agreement. Would you agree with me?

5 MR. COUILLARD: I mean, I would agree to that, subject
6 to the qualification I want to make, is one agreement was
7 made with an external parties and the other one is made
8 with two companies that are under common control.

9 MR. DeVELLIS: Well, how do you mean -- this is
10 between THESI and the City of Toronto, which are --

11 MR. COUILLARD: Yes. The first one, we have done this
12 agreement as an arm's-length transaction between the city
13 and Toronto Hydro, and then when we moved -- that's the
14 first agreement in 2005. Then the other agreement is made
15 between THESI and NewCo, which is two related companies.
16 We're basically just transferring the assets.

17 MR. DeVELLIS: That's fine. But the purchase price
18 for this current agreement is based essentially on the
19 previous purchase price. It is the \$60 million carried
20 through to 2009. So, essentially, it is the same purchase
21 price carried through, but with a much more expansive
22 assumption of liability clause.

23 MR. COUILLARD: I would disagree with that. I think
24 it is based on a net book value of THESI at the moment of
25 the transaction.

26 MR. DeVELLIS: Which is exactly the same value -- the
27 same basis upon which the original purchase price was
28 determined.

1 MR. COUILLARD: That's your conclusion, Mr. DeVellis.
2 That is not our conclusion. Our conclusion is this is the
3 book value at the time of the transaction between THESI and
4 NewCo.

5 MR. DeVELLIS: What was the valuation based on in the
6 transaction between THESI and the City of Toronto?

7 MR. COUILLARD: It was based on the agreed upon price
8 between the city and Toronto Hydro.

9 MR. DeVELLIS: No, I understand that. I thought
10 earlier, when I was asking you about the Deloitte
11 valuation, you said that that was essentially the net book
12 value.

13 MR. KAISER: No. They used it to represent net book
14 value. It was based upon a revenue forecast over --

15 MR. DeVELLIS: That's correct, Mr. Chair. Okay.

16 So you don't think that -- given the differences in
17 the liability clauses, you don't agree with me that there
18 should have been a difference in the purchase price as
19 between the two transactions?

20 MR. COUILLARD: I do not.

21 MR. DeVELLIS: Okay. Just one last question. You had
22 a reference earlier to insurance costs -- sorry, the
23 liabilities being covered by insurance, and it was
24 \$900,000. That was the potential liability to THESL from
25 the list of liabilities?

26 MR. SARDANA: Right. I think what Mr. Rodger was
27 referring to was that there were nine events that are still
28 being litigated and nine claims. And the maximum exposure

1 that we would have is \$100,000, which is our deductible
2 under our liability policy.

3 MR. DeVELLIS: Are those insurance costs or the
4 insurance premiums -- are they included in the 5.9 million
5 that we looked at earlier?

6 MR. SARDANA: Yes. So streetlighting today pays for
7 its share of insurance cost, so that is included in that.

8 MR. DeVELLIS: Okay. Thank you, panel. Those are my
9 questions. Thank you, Mr. Chairman.

10 MR. KAISER: Thank you.

11 Mr. Buonaguro.

12 **CROSS-EXAMINATION BY MR. BUONAGURO:**

13 MR. BUONAGURO: Thank you. Good afternoon.

14 If I could take you to the diagrams exhibit, I think
15 it is K1.2. And for this, sir, you can put it on the
16 screen for me.

17 MR. LaPIANTA: Oops. The batteries are dead.

18 MR. COOK: Which would you like, sir?

19 MR. BUONAGURO: We can start with diagram number 1.

20 Thank you. I can tell you, when I first saw this
21 diagram and the first time it was introduced to me, I had
22 thought that the green and red colouration and the fact
23 that you had six different scenarios represented different
24 actual ownership potentials on any particular street in
25 Toronto.

26 But my understanding is that that is not precisely
27 true. My understanding - and perhaps you can confirm -
28 based on what transpired this morning, is that the green

1 and the red colouring denotes what the ESA determines to be
2 the case in any particular situation on the street and that
3 that doesn't necessarily represent the actual ownership at
4 the time that the assets were put into place, for example.

5 Is that fair? Is that what actually is the case?

6 MR. LaPIANTA: Well, if I understand it correctly,
7 actually what it represents is that the asset transfers
8 never change. In other words, ownership doesn't change.

9 What changes is the interpretation of where, you know,
10 either the Code or Ontario Reg. 22/04 is applied.

11 MR. BUONAGURO: Right. So, for example, looking at
12 diagram number 1, at first glance - and this is my
13 misperception - I saw the red and said, Okay, the red means
14 that is owned by THESL, and when I saw the green, I said,
15 Well, that means the green stuff is owned by THESI, but
16 that may not be the case, for example.

17 It is possible in a scenario -- and just thinking
18 about ownership. If you look at the diagram, it is
19 possible that THESL could own what is labelled as the
20 existing street light low voltage line; right? That is a
21 possible scenario, or is there an example in Toronto where
22 THESL owns what is labelled here as a green line?

23 MR. COOK: There may be situations throughout the
24 asset that would -- that green line could be a THESL line,
25 yes.

26 MR. BUONAGURO: Okay. And at the same time, on that
27 same scenario, there's possibilities where THESI owns the
28 poles and the light fixtures, and such; actually owns them?

1 MR. COOK: Yes, that's correct.

2 MR. BUONAGURO: And it is also possible that despite
3 that, when it comes to the ESA coming to inspect or deal
4 with that particular situation, they might look at this and
5 say all of it requires ESA inspection because of the way in
6 which it is situated, based on this demarcation of
7 ownership interpretation of the regulation?

8 MR. LaPIANTA: Yes. As testified in my evidence-in-
9 chief, the ESA will appear on site and the regulator will
10 make assumptions as to where the point of demarcation is,
11 and, as such, then will determine what needs to be
12 inspected. The balance is typically inspected or audited
13 by THESL.

14 MR. BUONAGURO: So from the ESA's perspective, they
15 don't really care who actually owns the assets. They care
16 about how the assets relate to one another?

17 MR. LaPIANTA: Well, no. I don't mean to speak for
18 the ESA, but my sense is they would care who owns the
19 asset. Their auditing and inspection jurisdiction under
20 the Code extends only so far as non-utility distribution
21 assets. For utility distribution assets, we are covered on
22 a Reg. 22/04 and have a self-auditing function of our own
23 equipment.

24 So the answer is, yes, they do care who owns what,
25 because that deems where they inspect, where they don't.

26 MR. BUONAGURO: Okay. Well, maybe we can go to -- I
27 guess diagram number 3 is a good example.

28 Looking at this diagram, and I guess going with

1 possibilities, it is possible that THESI owns the entire
2 line called existing street light low voltage, actually
3 owns it; correct?

4 MR. COOK: Yes, that's correct.

5 MR. BUONAGURO: And despite that, it is possible that
6 the ESA would come along and look at this situation with
7 the Bell telephone booth and TTC bus shelter and say, We're
8 going to assume that the LDC owns up to the TTC bus shelter
9 and deem that LDC-owned for the purposes of the regulation
10 and the distribution -- or the Electrical Code, do exactly
11 what you say they're doing here?

12 MR. COOK: It would more than likely be the reverse.
13 The ESA inspector that joins my crew to do inspection along
14 that line would assume that it would be streetlighting and,
15 therefore, under the Code.

16 What we are demonstrating here is how that line
17 transitions from functionality, not actual legal ownership
18 change.

19 So you can see that that line changes colour at the
20 last USL-connected load, which demonstrates why that is red
21 rather than green. However, in practicality, out on the
22 street the ESA inspector, with my crew, would more than
23 likely, because of historical practice, consider that to be
24 streetlighting and, therefore, under the Code.

25 The problem that arises is the connectors, for
26 example, would be not Code connecting the phone booth or
27 the TTC bus shelter. It could be, as Mr. LaPianta
28 identified, a split bolt connector rather than a gel pack

1 connector, which is Code from the ESA.

2 MR. BUONAGURO: Okay. So you're saying, based on that
3 scenario, they would -- well, my example, the inspector
4 would be right, then, because in my example I said that
5 that line was actually owned by THESI. And you're saying,
6 well, they would come, and despite the fact that the TTC
7 bus shelter was connected in that way and despite the fact
8 the Bell telephone booth was connected that way, because
9 THESI owns it, they would say, Well, it is all green. It
10 is all ESA inspection.

11 MR. LaPIANTA: In reality, when the inspector shows
12 up, he is more likely to lean on the side and assume that
13 is all THESI equipment. But that, in and of it itself, is
14 at the crux of the problem, because that portion of the
15 line from the LDC chamber to the Bell telephone booth, in
16 fact all the way to the TTC bus shelter, is actually no
17 longer behaving as a street light circuit. It is in fact
18 behaving as a distribution circuit.

19 MR. BUONAGURO: Okay. So you are -- you're relying on
20 the issue of behaviour, and what I am saying is that --
21 what I am trying to clarify is that you have imported the -
22 - the concept of behaviour in terms of what the ESA should
23 be doing. But in terms of the ownership, you're saying --
24 you seem to be agreeing that if the ownership is the
25 streetlighting, is THESI, if THESI owns the streetlighting
26 assets then the ESA will come along and treat it as
27 streetlighting assets, THESI assets under the ESA
28 inspection under the Green sort of regime.

1 MR. COOK: Yes, that's correct.

2 MR. BUONAGURO: And you're saying they shouldn't be
3 doing that because it is acting as a -- as a distribution
4 system?

5 MR. LaPIANTA: Well, legally under the strict legal
6 interpretation, no transfer of assets has occurred.

7 MR. BUONAGURO: I'm not sure how that helps.

8 MR. LaPIANTA: Well, if the assets had -- if the
9 street light assets haven't been transferred to the LDC,
10 then they're not governed by Ontario Reg. 22/04. They're
11 governed by the Code, which the ESA has jurisdiction.

12 MR. BUONAGURO: Right. So if at any time, the ESA is
13 on-site and is aware of who actually owns the assets, then
14 that knowledge governs how they act. So if they know that
15 the assets are owned by THESI, and THESI is not a licensed
16 distributor, then they will treat them as though they're
17 not a licensed distributor with respect to their assets,
18 and the Code will apply. Is that correct?

19 MR. COOK: Yes. Yes, that's correct.

20 MR. BUONAGURO: And if they know the assets are owned
21 by THESL, the LDC, then they will allow -- the Reg will
22 prevail?

23 MR. COOK: Correct.

24 MR. BUONAGURO: Okay. And if I go just to -- on the
25 same exhibit at page 5 of 16 -- and you don't have to turn
26 -- it is on the exhibit, but I will just read the section.
27 It is at the fourth paragraph of that little -- it is your
28 -- part of your explanation for the IR responses.

1 You say:

2 "The other implication of the status quo is that
3 the SEL system in effect functions as an
4 unlicensed distributor as a result of the
5 changing point of supply."

6 And I think that describes what I have been describing
7 here, is that regardless of what is happening in terms of
8 connections to USL loads and intermingling with street
9 light loads and such, the fact that THESI actually owns the
10 assets means with respect to those assets, they're acting,
11 at worst, as an unlicensed distributor, and the Code
12 applies to them; correct?

13 MR. LaPIANTA: I think that is fair, yes.

14 MR. BUONAGURO: All right. Then further on in the
15 same exhibit, you have excerpted the Reg, 22/04.

16 And at page 3 of 10 of the Reg, at -- I guess it is
17 (2)(5) and (6), sets out the two parts that determine
18 whether the Code is going to apply or whether the Reg is
19 going to apply. And at part 6, it actually says:

20 "The ESC and not this Regulation applies to
21 distributors, other than distributors who are
22 licensed to own or operate a distribution system
23 under part 5 of the Ontario Energy Board Act."

24 Which means that the regulation you're talking about
25 actually contemplates unlicensed distributors, right?

26 It might help if you -- if put up the statute. It is
27 at page 28 of the PDF, which I think you are using, the
28 same PDF that I am using. It is the one you sent me and

1 everybody else.

2 MR. LaPIANTA: This is -- I don't think so.

3 MR. BUONAGURO: Oh, I'm sorry. You are not using the
4 actual exhibit. Okay.

5 MR. LaPIANTA: This is purely a PowerPoint.

6 MR. BUONAGURO: So if you go to K1.2, it is page 28, I
7 guess, of that exhibit. And it is just an excerpt from the
8 Reg, page 3 of 10, O.Reg. 22/04, and it's section 2(6).

9 MR. LaPIANTA: Give us a moment.

10 MR. BUONAGURO: Sure.

11 MR. LaPIANTA: Could you give us the reference again?
12 Sorry.

13 MR. BUONAGURO: I got it from what I believed was
14 labelled K1.2, which is your additional responses to OEB
15 staff with respect to the ESA, in the package of materials
16 that came in the PDF.

17 MR. LaPIANTA: Oh, okay.

18 MR. BUONAGURO: It is an excerpt from the Electricity
19 Act, 1998, O.Reg. 22/04, page 3 of 10.

20 MR. LaPIANTA: Page 3 of 10?

21 MR. BUONAGURO: Of the Regulation. I think the
22 Regulation might be the last part of the package.

23 MR. LaPIANTA: Okay. Okay. We have it.

24 MR. BUONAGURO: So I am reading -- I guess it is 2(6),
25 where it specifies that the ESC, the Code:

26 "...and not this regulation applies to
27 distributors other than distributors who are
28 licensed to own or operate a distribution system

1 under part 5 of the Ontario Energy Board Act."

2 Which suggests to me that the Electricity Act and
3 this Regulation in particular contemplates a situation
4 where an unlicensed distributor is running a distribution
5 system. Am I wrong?

6 [Witness panel confers.]

7 MR. LaPIANTA: I am -- quite frankly I am not
8 qualified to --

9 MR. BUONAGURO: Okay. I have raised it for you
10 and --

11 MR. LaPIANTA: We have to get a legal interpretation
12 of that.

13 MR. BUONAGURO: Right. Now -- that's fine. I would
14 point out, though, too, there may still be a problem with
15 the OEB Act, which requires distributors to have a licence.

16 MR. COUILLARD: Yes, that's correct.

17 MR. BUONAGURO: Right, but in terms of the Electricity
18 Act and the Regulation, it actually -- it appears at least
19 to recognize - I guess this is more argument, because it
20 has to do with the interpretation of the Regulation - but
21 it seems to suggest that there are situations where people
22 are distributing electricity in accordance with the
23 definition in the Regulation and under the Act, even though
24 they don't have a licence, and that the Code applies to
25 them. I don't know if you have to agree with that or not.

26 MR. COUILLARD: I think that is something that could
27 be left for argument, because -- I mean I would agree with
28 you that some of the assets of THESI are used -- Toronto

1 Hydro Energy Services are used to convey electricity or
2 distribute electricity.

3 On the other hand, the bill that is received by the
4 customers is actually sent by THESL in this particular
5 case.

6 So which one of the two is distributing the
7 electricity? One used the asset and the other gets the
8 bill, so I think it is more subject to argument.

9 MR. BUONAGURO: First, just to be very careful, I
10 haven't conceded yet that they're necessarily conveying
11 electricity in all parts. And that has to do with
12 Mr. Mondrow's cross, but I'm not going to argue that, just
13 to make sure it wasn't conceded.

14 MR. COUILLARD: Point noted.

15 MR. BUONAGURO: The second part is that I think you
16 confirmed, though, that the behaviour of the ESA when they
17 know who the asset is owned by, falls in line with this,
18 that even if they think -- and I guess we don't have their
19 evidence on what they think THESI is doing -- but if they
20 know that THESI owns the asset, they treat it as a Code
21 problem.

22 MR. COUILLARD: We can't speak for the ESA. We can't
23 speak to the state of mind of the ESA on that.

24 MR. BUONAGURO: I thought we just had a conversation
25 where you said if you're on site and they know the asset is
26 owned by THESI, they always treat it under the Code.

27 MR. LaPIANTA: Yes, that's correct.

28 MR. BUONAGURO: Thank you.

1 Now, we can go -- you still have the diagram up there,
2 but I guess this diagram is as good as any; that is diagram
3 number 6. And this is illustrative. It has the traffic
4 signals, and other diagrams have the bus shelters and the
5 telephone booths on them.

6 MR. LaPIANTA: This one here?

7 MR. BUONAGURO: Right. That's a good one.

8 My question is: How come -- it struck me that none of
9 the telephone booth, the TTC bus shelter, the seasonal
10 decoration, the billboard, none of them are highlighted in
11 green. Is that because you weren't dealing with non-THESI
12 assets in the illustration?

13 MR. COOK: That's correct.

14 MR. BUONAGURO: Would they be labelled green? If we
15 were talking strictly about which of the assets on this --
16 it's kind of like a Sesame Street song, which of these
17 assets are being regulated by the Code and which of them
18 are not -- they would be -- they would be green?

19 MR. COOK: The connections would be green there, yes.
20 But the assets themselves would not be green.

21 MR. BUONAGURO: So would that make --

22 MR. COOK: We are trying to demonstrate here that any
23 other USL customer along here would be under the Code as
24 well.

25 MR. BUONAGURO: Right. So but for the -- for the
26 street lights, I think universally throughout the
27 illustrations you have the entire street light labelled
28 green. Right?

1 MR. COOK: The pole and the bracket and the fixture,
2 correct.

3 MR. BUONAGURO: Yeah.

4 MR. LaPIANTA: This one here.

5 MR. BUONAGURO: What I am trying to get at, and I
6 don't want to make too much of it, I am just trying to see
7 if there is an actual distinction between the street light
8 at its extreme and the other loads. I think earlier in
9 your testimony, you talked about the street lights versus
10 everything else, the bus shelters and such.

11 I think one of your distinctions was that you didn't
12 build any of those other assets, right? Originally?

13 MR. COOK: We did not.

14 MR. BUONAGURO: Right. But is there any -- there is
15 nothing particular in how they're built to distinguish
16 them?

17 For example, electrically, they're load just like the
18 like lights, are they not?

19 MR. LaPIANTA: Yes. I think you're referring to my
20 earlier testimony, where I said the intent would be to
21 leverage the distribution -- the streetlighting system as a
22 whole, to improve the reliability and the planning around
23 the electrical distribution system, to the extent that the
24 luminaire itself behaves really as a load no differently
25 than a TTC bus shelter, no differently than a Bell
26 telephone booth, the luminaire itself.

27 MR. BUONAGURO: In terms of leveraging the existing
28 streetlighting structure, is it essentially -- it sounds

1 like it's an accident of the physical characteristics of
2 street lights, that they're useful to THESL in hanging
3 wire, for example, as opposed to a TTC shelter or a
4 telephone booth.

5 MR. LaPIANTA: Perhaps. But I think the larger
6 reason, the bigger reason, is that, quite frankly, the
7 streetlighting system grew up with the electrical
8 distribution system for the past 90 years. It was part and
9 parcel of the electrical distribution system. It is not by
10 coincidence that we have the ability now to leverage -- to
11 use a street light concrete pole to feed what is otherwise
12 an unmetered scattered load.

13 The systems have always been very integrated and
14 continue to be integrated, and that is what is posing, to a
15 large extent, the problem that we face today.

16 MR. BUONAGURO: Okay. What I am understanding from
17 that is that it is not an accident, which is the word I
18 used. You're saying part of it is that they were built in
19 such a way that they could be leveraged later on?

20 MR. LaPIANTA: Absolutely.

21 Prior to the sell of the street light assets to the
22 city, street light systems and distribution systems were
23 designed together --

24 MR. BUONAGURO: Okay.

25 MR. LaPIANTA: -- at the same time, with engineering
26 implications embedded in both.

27 MR. BUONAGURO: I take your testimony earlier on about
28 the troubles in identifying the assets, which company

1 they're related to.

2 In theory, if we were to take a walk throughout all of
3 Toronto or your franchise area, would you be able to go to
4 each asset and identify which company actually owns the
5 asset, and, if you could, how would you do that?

6 MR. LaPIANTA: It is relatively simple to determine -
7 again, relatively simple to determine - the asset owner by
8 viewing the asset itself.

9 What is difficult is determining in fact the point of
10 connection, where that connection is made, because when you
11 open a handwell, it is just a bunch of wires. Unless
12 they're labelled and somehow identified, it becomes
13 difficult to know which wire goes where.

14 The city is so dynamic, particularly in the downtown
15 core. Changes are made to it hourly, and records are what
16 they are. You are not always going to find records that
17 are up to date that will tell you specifically who is who
18 in the handwell and where that wire runs.

19 MR. BUONAGURO: Maybe you can help me with the
20 distinction between -- you said, on the one hand, it is
21 easy to determine who the asset is owned by, but then you
22 said they're difficult -- I don't understand the
23 distinction.

24 MR. LaPIANTA: If you look at the obvious, if you're
25 looking at a bus shelter, you know that belongs to the
26 TTC. If it's a telephone booth, it's Bell. If it's a
27 billboard, sometimes you are able to determine who the
28 owner of the billboard is, whether it is a private, whether

1 it is Pattison, that type of thing.

2 But where they're connected is what is difficult to
3 determine.

4 MR. BUONAGURO: I think you have a different, more
5 specific use of the word "asset" than I do. I think that's
6 the problem. So looking at the diagram, I guess, for
7 example, when you are walking down the street and you see -
8 - and you know there is an existing street light low
9 voltage line and several handwells connecting it, you're
10 saying you can't be sure, right off, who owns that line or
11 who owns the handwells, who is responsible for them?

12 MR. LaPIANTA: It is unclear where the supply point
13 is, where the supply point -- where the actual energization
14 comes from.

15 MR. BUONAGURO: You mean following it back to, in this
16 picture, the LDC chamber?

17 MR. LaPIANTA: Well, again, this is -- yes. I mean,
18 ultimately the supply feed -- again, I think I spoke to
19 this earlier this morning.

20 If, for instance, this telephone booth is being
21 installed on this line, it may be -- obviously when they
22 get there, the first point of contact or their first point
23 where they try and achieve a supply point would be at that
24 handwell, but they may open that handwell and find that
25 handwell is in fact occluded. They can't make a connection
26 there. So they go to the next handwell downstream, so on
27 and so forth.

28 It appears when you are standing in front of that

1 telephone booth that the point of connection is the
2 handwell immediately opposite the telephone booth. In
3 reality, it may be two or three spans further up and down.

4 MR. BUONAGURO: Okay. Thank you.

5 MR. LaPIANTA: So when you open that handwell at the
6 telephone booth, you're seeing connections. It may not be
7 the connection to the telephone booth. Because the
8 telephone booth was placed there afterwards, those
9 connections could have perhaps been feeding the --
10 something else, other billboards, other USL scattered
11 loads.

12 MR. BUONAGURO: Okay.

13 MR. QUESNELLE: But, Mr. LaPianta, is it clear that
14 the main run is -- is it determinable whether or not the
15 main run is owned by THESL or THESI?

16 MR. LaPIANTA: More often than not, that is
17 achievable, yes.

18 MR. QUESNELLE: Okay, thanks.

19 MR. BUONAGURO: You said more often than not, so it
20 begs the question: What would prevent you from knowing?

21 MR. LaPIANTA: Well, there are situations, for
22 instance, where not all handwells within the City of
23 Toronto are owned by THESI; Toronto Hydro, THESL itself,
24 own handwell.

25 There may have been a handwell system installed in the
26 boulevard when the area was built. However, the street
27 lights were not on that side of the road. The street
28 lights were on the other side of the road.

1 As the area developed, street lights were moved from
2 the one side to the other side of the road. That handwell
3 system is still Toronto Hydro's handwell system, and now
4 the points of connection are specifically at that handwell
5 for each street light pole. That handwell system would be
6 owned by THESL, not THESI.

7 MR. BUONAGURO: Thank you.

8 MR. LaPIANTA: So it depends which came first.

9 MR. BUONAGURO: Right.

10 MR. QUESNELLE: Just on that point, predominantly, who
11 would own the majority, then, of the handwell systems?

12 MR. LaPIANTA: I am going back to the numbers that we
13 were able to see from the contact voltage. My sense was
14 that THESL owns the vast majority of the handwells that we
15 inspected.

16 MR. QUESNELLE: Thank you.

17 MR. BUONAGURO: That's the, I think, 65,000 or so; is
18 that right?

19 MR. LaPIANTA: No. There was -- 65,000 was the pieces
20 of equipment that were inspected. The handwells were
21 somewhere in the vicinity of, I believe, just shy of
22 15,000, of which I believe somewhere in the vicinity of
23 two-thirds is actually THESL.

24 MR. BUONAGURO: Okay.

25 There was some brief discussion about light and I
26 guess charging for light service. I believe it was
27 suggested that assuming that this transfer goes through the
28 way that you proposed, that would mean that THESL would

1 actually own the actual lightbulbs and basically be
2 providing light service as part of its business, and then
3 it would be applying for a light charge.

4 MR. COUILLARD: No. Under the current service
5 agreement with the city, the city is actually responsible
6 for the cost of electricity that relates to the light.

7 MR. BUONAGURO: The commodity?

8 MR. COUILLARD: Yes.

9 MR. BUONAGURO: Separately?

10 MR. COUILLARD: Yes.

11 MR. BUONAGURO: But you would still be charging for --
12 I guess it's hard to describe the service of bringing
13 light, turning that commodity into light.

14 MR. COUILLARD: Yes. I guess if your question is more
15 like, you know, the bulb itself will be included in the
16 rate base as part of its application, my answer would be
17 yes.

18 MR. BUONAGURO: But on top of that, then, there was a
19 suggestion that there would be application for a charge for
20 that, for that service. Do you recall that?

21 MR. COUILLARD: No. Well, it will be part of the
22 whole -- like, it will be part of the whole distribution
23 charge. The light will be factored. The cost of the bulb
24 will be factored into that.

25 MR. BUONAGURO: Okay. I was very -- I thought very
26 specifically that I heard testimony that you would be
27 applying later for a light charge.

28 MR. SARDANA: I think, Mr. Buonaguro, I was conceding

1 of a scenario where that could happen down the road. I
2 think that is what I predicated my comments on.

3 Again, I think you have to take into account several
4 things here. One is the timing of a decision coming from
5 this Panel. We are here now in the middle of November. It
6 is conceivable that we don't get a decision well before --
7 or well after, rather, rate finalization into our 2010 rate
8 year, in which case we're looking at 2011 before we can
9 come back and look at this whole thing from the regulatory
10 construct perspective.

11 So one scenario we are looking at is we will continue
12 as is for now, again, assuming that the transaction is
13 approved, in that the street light and USL classes will
14 continue to be charged their charges as they are today.
15 And the city would continue to pay now New THESL under its
16 contract, which would then be used as a revenue offset.

17 In the next rendition of the whole thing, when we come
18 before the Board, it obviously falls completely within the
19 Board's auspices to set rates and charges. We could then
20 come back to them and say, Okay, well, here's the entire
21 company now - that's the full New THESL - and here are the
22 revenue requirement consequences of the entire company, and
23 here are the rates and charges that fall out, including new
24 rates and charges for streetlighting services in the USL
25 class.

26 Within that, then, you could conceive of a situation
27 where they paid distribution charges, and then perhaps
28 another charge for lamps or whatever.

1 Again, I think it depends on what is transferred, what
2 is approved to be transferred.

3 MR. KAISER: What happens in that case to the 30-year
4 contract? It just drops off?

5 MR. SARDANA: We are not sure yet, Mr. Kaiser. It is
6 something that we would have to then engage the city on.

7 MR. COUILLARD: I think it is conceivable, Mr. Chair,
8 that the contract will still survive this, the fact that
9 there is a light charge or not. It is really more a
10 concept to be able to differentiate within the
11 distribution. I mean, you could have one big distribution
12 charge that includes the lights. As long as the lights are
13 directly charged to the streetlighting rate class, it
14 doesn't make a difference.

15 And I think the Board in future proceedings will be
16 able to test that, and the assumption that Toronto Hydro
17 would take, at their leisure, and?

18 MR. KAISER: I was just wondering -- this is not the
19 first time you suggested this -- whether in -- whether it
20 is next year or the year after, you would come with a rate
21 proposal with respect to these services that would require
22 the Board to, in effect, break the existing contract with
23 the city.

24 MR. SARDANA: I think it would have the action of
25 doing that.

26 MR. KAISER: Can we do that?

27 MR. SARDANA: I would have to look to counsel.

28 MR. KAISER: Can you do that?

1 MR. COUILLARD: Can we -- well, we could go -- we
2 actually had discussion with our shareholder about, you
3 know, would we prefer to keep the contract or not.

4 So far we haven't made any decision. There hasn't
5 been any negotiation. We believe we can make it work with
6 and without the contract. We don't believe that the fact
7 that there is a contract in there makes any difference,
8 because if you -- if there is no contract, then, you know,
9 the -- there's no more revenue offset, but then the
10 distribution charge will increase. And so, and as we
11 demonstrated in the evidence, you know, there is no
12 material difference between the two having either the
13 revenue offset and lower distribution rate, or a higher
14 distribution rate without the revenue offset.

15 MR. KAISER: If the contract continues for 30 years --
16 let's say you can't get out of it, and I haven't looked at
17 the terms -- is there a possibility that in this new world,
18 the contract would not cover the costs of servicing the
19 city?

20 MR. COUILLARD: Well, there is mechanism in the
21 contract that allows us -- there is price increase and
22 there is like a lot of adjustment clause in this contract,
23 that I believe actually would provide us with the financial
24 resource to service the city.

25 And in the event that there was not, then I think the
26 second -- the second alternative is to distribution rates.

27 So as an example, if the contract -- if the costs for
28 streetlighting starts to be getting -- go higher than what

1 the revenue offset is, well, then the distribution charges
2 are likely to increase. And as long as we are able to
3 concentrate these distribution charges or allocate these
4 distribution charges towards the streetlighting client --
5 customer class, then it wouldn't make a difference whatever
6 the city pays it through their contract fees or through
7 distribution revenue.

8 MR. KAISER: Thank you.

9 MR. BUONAGURO: You've got me thinking now, which is
10 not good --

11 MR. COUILLARD: Sorry.

12 MR. BUONAGURO: -- at 4:00 o'clock in the afternoon.

13 So for example, you are transferring \$60 million
14 dollars or so worth of assets based on the valuation in the
15 contract, right?

16 MR. COUILLARD: Based on the net book value in the
17 financial statements, yes.

18 MR. BUONAGURO: So based on the -- and largely, it is
19 based on the argument that those are largely distribution
20 assets?

21 MR. COUILLARD: Correct.

22 MR. BUONAGURO: So how much of those assets are light
23 service assets?

24 MR. COUILLARD: Well, it depends where we -- I don't
25 think we have the information as granular as the bulb, for
26 example. It depends where we actually set the demarcation,
27 where does the light start versus, you know, where is the
28 pole and versus -- I mean we have certain categories of

1 assets that we're using.

2 I know, for example, in our -- in our tracking system,
3 we can -- we know the overhead, the underground, the pole,
4 the net book value for the pole, the net book value of the
5 lights. But I am not sure to what extent, you know, the
6 light actually gets divided up, as far as like does it get
7 to the bulb, does it include the thing that encapsulates it
8 or...

9 MR. BUONAGURO: And presumably, if you do go down this
10 light charge -- I think you have said this already, but
11 maybe not used these exact words. I think you were
12 suggesting it would be on a fully-allocated basis. You
13 would do a full allocation of THESL's costs, including
14 these new streetlighting costs to light service, I have
15 been calling it. Is that how it would be done?

16 MR. COUILLARD: That's our intention.

17 MR. SARDANA: That's correct.

18 MR. BUONAGURO: Thank you. I wanted to confirm my
19 understanding of -- of the allocation aspect of this, of
20 this actual proposal as opposed to this theoretical
21 proposal.

22 And my understanding -- maybe you could confirm very
23 quickly -- is that the current 2010 rate proceeding is
24 based on a 70 percent revenue-to-cost ratio for
25 streetlighting, 80 revenue-to-cost ratio for USL.

26 And when I take, say, seventy percent and 80 percent,
27 that is seventy percent and 80 percent of the proposed 2010
28 -- quote/unquote -- "traditional distribution revenue

1 requirement."

2 And that in addition, if this proposal in this
3 application goes through, they will be charged a 100
4 percent revenue-to-cost ratio for all of these new --
5 quote/unquote -- "streetlighting" assets.

6 MR. SARDANA: That is absolutely correct.

7 MR. BUONAGURO: Okay. And that's how you -- and then
8 you blend the two to get their functional new distribution
9 revenue-to-cost ratio?

10 MR. SARDANA: That's correct. And that's why I
11 believe I mentioned that when you run it through that,
12 although we haven't done the detailed cost allocation
13 exercise, for the streetlighting class, for example, the
14 revenue-to-cost ratio would go from about 70 to about 80
15 because of that, because the new costs are being 100
16 percent allocated down.

17 MR. BUONAGURO: Right. But then if you go -- if want
18 to go back and say: Well, how much are they theoretically
19 undercollecting on the traditional distribution assets, it
20 would be still 70 percent?

21 MR. SARDANA: That's correct.

22 MR. BUONAGURO: And they still would be collecting 100
23 percent, or they would be charged 100 percent of the new --

24 MR. SARDANA: That's correct.

25 MR. BUONAGURO: -- charges that are being incurred
26 because of this allocation?

27 MR. SARDANA: Correct.

28 MR. BUONAGURO: Okay.

1 MR. SARDANA: And that is also -- sorry,
2 Mr. Buonaguro. That is also why we're allocating 100
3 percent of the revenue offsets to those two classes.

4 MR. BUONAGURO: Thank you. I understand.

5 Now, one last bit of questioning, or two, two bits.

6 In the application and in some of the interrogatory
7 responses, you refer to the fact that there is no impact on
8 other rate classes?

9 MR. SARDANA: That's correct.

10 MR. BUONAGURO: And not to be picky about the words,
11 but I think sometimes it is actually said that there won't
12 be any material impact on the rate classes.

13 MR. SARDANA: Our evidence is that there won't be any
14 impact on the other rate classes, just to get the record
15 straight.

16 MR. BUONAGURO: Okay. Now, I will tell you why I
17 raise the point. Not that I think that they might be
18 material, based on what you are saying, but rather that
19 there is something in there that maybe, for example, for
20 this year, the transfer may not have material rate impacts
21 for 2010, but that it is done in such a way that it could
22 have material impacts in other years. And I wanted to know
23 if that is possible.

24 MR. SARDANA: Looking at this transaction today, if
25 you look at the whole transaction logically, you know, the
26 company is collecting roughly 17 million in revenue -- the
27 streetlighting company, if I can call it that -- and it
28 costs them about 17 million to run the business. And that

1 revenue and cost stream is -- is expected to continue into
2 the future, you know, subject to increases, normal
3 increases, normal economic increases.

4 So if you apply the same logic down the road, you are
5 getting in -- you're -- you're experiencing X amount in
6 costs, and roughly Y amounts in revenues which are
7 virtually equivalent. So that should continue. That
8 relationship should continue. And that the offsets should
9 all -- always be there to offset all of those costs.

10 MR. BUONAGURO: I don't want to get too far into the
11 hypothetical, but it all -- it seems to me that that is all
12 premised on the idea that the City of Toronto, who is also
13 your shareholder, will continue to pay \$17 million or so,
14 or at least pay an amount that covers the cost of putting
15 those assets into rate base, to offset it.

16 And that's -- I can understand why you might think
17 that is probably true, but it -- it is still a theoretical
18 problem that they may not. They might renegotiate a new
19 contract, for example.

20 MR. SARDANA: You know, my colleague has pointed out
21 another fairly important point, that we're moving the --
22 these two classes, streetlighting and USL, to 100 percent
23 revenue to cost responsibility anyway, as we are with all
24 of the other classes. So down the road, they would be
25 paying their full cost of service, right? We would be
26 getting the revenue requirement completely in -- in
27 alignment with our costs.

28 To answer your question, then, I mean I guess this --

1 this is within the realm of the hypothetical. And again,
2 as I mentioned, it depends on what the Board approves here.

3 Once the assets are all transferred, assuming they're
4 all transferred, we are then in a ratemaking world. It is
5 then a regulated company. And to the extent that rates and
6 charges are set by our regulator, I don't think the city
7 would have a choice but to pay those rates and charges,
8 because they're approved and set by the regulator.

9 MR. BUONAGURO: Okay. One last questioning or bit of
10 questioning. And again, I am just looking at the diagram
11 on the board, just to help me out, and that is diagram
12 number 5 from K1.2.

13 And again, I think I -- the first question I asked is
14 whether or not, when we look at the red line there that
15 says "existing streetlight low-voltage line," there is a
16 possibility or there are examples within the City of
17 Toronto where those lines are owned by THESL, and there are
18 examples, obviously, where those lines are owned by THESI;
19 correct?

20 MR. LaPIANTA: Yes, that's correct.

21 MR. BUONAGURO: And currently, from THESL's
22 perspective, when THESL installs one of those lines, how is
23 it treated in rate base? Is it directly allocated to
24 streetlighting in USL classes?

25 MR. LaPIANTA: This is an exclusive street light
26 circuit or a THESL circuit?

27 MR. BUONAGURO: THESL has done the installation and it
28 is connecting to street lights.

1 MR. SARDANA: I think in that example, I would suspect
2 there are provisions within the cost allocation methodology
3 that would guide us to how we allocate those costs.

4 MR. BUONAGURO: Hmm-hmm.

5 MR. SARDANA: So...

6 MR. BUONAGURO: Let me put the counter to you. Right
7 now when THESI installs a street light low voltage line,
8 obviously it's -- maybe not "allocated" is the right word,
9 but it is part of their asset base, and, therefore, it is
10 automatically part of their charge exclusively to their
11 streetlighting customer.

12 So my question is: Going forward, if you have
13 combined the two, right, how would you determine when you
14 are doing work that would have normally been done by THESI
15 to support the streetlighting versus doing work that you
16 would -- the very similar work, but you may have been
17 allocating differently?

18 This may be a function of my not knowing the cost
19 allocation very well, but what I am concerned about is that
20 on a go-forward basis, whereas under THESI they would
21 clearly just be increasing the street light specific asset
22 base, you might be doing the exact same work that THESI was
23 doing, but you might be actually increasing the asset base
24 and allocating it across the system, which would be not
25 what was happening when THESI owned the assets.

26 MR. LaPIANTA: Moving forward, assuming the
27 application is approved, we have the capability to allocate
28 those costs in whatever granularity is required, whatever

1 cost model is approved. That will not be an issue.

2 MR. BUONAGURO: All right. Thank you.

3 MR. KAISER: Thank you. Mr. Blue, did you have a
4 question?

5 MR. BLUE: I did, sir.

6 MR. QUESNELLE: Your microphone, Mr. Blue.

7 **CROSS-EXAMINATION BY MR. BLUE (CONTINUED):**

8 MR. BLUE: Panel, just on the demarcation issue, can
9 you please turn to interrogatory response to interrogatory
10 10 of the Electrical Contractors Association of Ontario?
11 That is also section F, tab 21, schedule 10.

12 MR. COUILLARD: Yes, sir.

13 MR. BLUE: So, Mr. Couillard, I conclude from this
14 interrogatory response that if the application is approved
15 as applied for, and all of the assets you wanted to have
16 transferred to THESL are transferred with approval of the
17 Board, despite that, THESI will continue as a corporation;
18 is that correct?

19 MR. COUILLARD: That is correct.

20 MR. BLUE: Okay. And what other responsibilities does
21 THESI have?

22 MR. COUILLARD: THESI has energy management and
23 efficiency business. They also are involved with some
24 billing business that are not related to the streetlighting
25 business at all.

26 MR. BLUE: And so would we still have a call centre
27 and would we still have staff, board of directors, and all
28 of the normal accoutrements of the business corporation?

1 MR. COUILLARD: Well, no, not to that extent. I mean,
2 there is not going to be -- I mean, there might be a board
3 of directors, which will quite be -- will be significantly
4 reduced. If you look at the call centre, there won't be
5 any need for call centre, because the type of business
6 they're in is, like, contract type of business where you go
7 in and perform energy efficiency or management type of
8 services.

9 The billing is just a consolidated billing they're
10 offering to other -- to large customers.

11 MR. BLUE: All right. But it is going to continue
12 whether the Board approves the application as approved or
13 whether the Board only partially approves the application;
14 is that fair?

15 MR. COUILLARD: At this time, yes.

16 MR. BLUE: All right. Now, sir, Mr. Sardana, if the
17 Board in its wisdom were to choose a demarcation point
18 which was short of including all of the assets - and this
19 is hypothetical, but if they did - would you able to do a
20 cost study to cost those items?

21 MR. SARDANA: Hypothetically, yes.

22 MR. BLUE: And a cost study like that is all in a
23 day's work of cost allocators and rate designers, isn't it?

24 MR. SARDANA: Sure. I will agree with that.

25 MR. BLUE: All right. Can we just look at one other
26 response that you gave to the Electrical Contractors? This
27 is the response to interrogatory 13.

28 Tell me when you have that.

1 MR. LaPIANTA: Yes, we have that, sir.

2 MR. BLUE: Okay. So, Mr. LaPianta, you were asked
3 whether a specific separation of assets would be viable,
4 and you said: No, it would spoil the whole purpose of the
5 application. Is that fair?

6 MR. LaPIANTA: Yes.

7 MR. BLUE: Now, are you saying that to the Board with
8 respect to any demarcation point, other than full transfer
9 of assets?

10 MR. COUILLARD: We believe that the best outcome of
11 this proceeding, the best outcome for us and for looking
12 for efficiency, safety and optimization of the network, is
13 to have a full combination of both networks.

14 MR. BLUE: You said that several times, but that
15 wasn't what I asked you.

16 I asked you: Is any demarcation point, short of the
17 full assets, unacceptable to Toronto Hydro?

18 MR. COUILLARD: Yes.

19 MR. BLUE: Thank you, sir.

20 MR. KAISER: Thank you. Anything further, gentlemen?
21 No? All right. We will adjourn until 9:30 on Thursday.

22 --- Whereupon hearing the adjourned at 4:21 p.m.