



# ONTARIO ENERGY BOARD

**FILE NO.:** EB-2009-0180  
EB-2009-0181  
EB-2009-0182  
EB-2009-0183

---

**VOLUME:** 2

**DATE:** November 19, 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,  
25<sup>th</sup> Floor, Toronto, Ontario,  
on Thursday, November 19th, 2009,  
commencing at 9:49 a.m.

-----  
VOLUME 2  
-----

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. Q.C.	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

I N D E X     O F     P R O C E E D I N G S

<u>Description</u>	<u>Page No.</u>
--- Upon commencing at 9:49 a.m.	1
<b>TORONTO HYDRO-ELECTRIC SYSTEM LIMITED - PANEL 1 (resumed)</b>	1
<b>P. Sardana, JS Couillard, B. LaPianta, R. Cook; Previously Sworn</b>	
Preliminary Matters	3
Cross-Examination by Ms. Cochrane	8
--- Recess taken at 10:39 a.m.	33
--- Upon resuming at 11:21 a.m.	33
Re-Examination by Mr. Rodger	43
Questions from the Board	47
--- Luncheon recess taken at 12:23 p.m.	75
Submissions by Mr. Rodger	75
--- Whereupon the hearing concluded at 2:22 p.m.	102

E X H I B I T S

<u>Description</u>	<u>Page No.</u>
EXHIBIT NO. K2.1: BOARD STAFF DOCUMENTS BRIEF	10
EXHIBIT NO. K 2.2: TWO-PAGE EXCERPT OF EVIDENCE FROM EB-2009-0139	34
EXHIBIT NO. K2.3: EXCERPT FROM OEB ACT, 1998, AND DECISION	84

## U N D E R T A K I N G S

<u>Description</u>	<u>Page No.</u>
--------------------	-----------------

UNDERTAKING NO. J2.1: TO CONFIRM HOW CONTACT VOLTAGE LEVEL III EMERGENCY COSTS ARE ALLOCATED.	42
--	----

1 Thursday, November 19, 2009

2 --- Upon commencing at 9:49 a.m.

3 TORONTO HYDRO-ELECTRIC SYSTEM LIMITED - PANEL 1

4 (RESUMED)

5 Pankaj Sardana; Previously Sworn

6 Jean Sebastien Couillard; Previously Sworn

7 Ben LaPianta; Previously Sworn

8 Rick Cook; Previously Sworn

9 MR. KAISER: Please be seated.

10 Before we start, Mr. Rodger, I wanted to ask you if in  
11 your argument you will address a legal question. You don't  
12 need to do it now, but you can address it in argument. I  
13 just want to give you some advanced warning.

14 When we look at the -- read the transcript last night,  
15 we spent hours trying to figure out where distribution  
16 stops and load begins. And the only point of agreement I  
17 can see is that your witnesses and all of the other parties  
18 agree that the luminaire is load. So assume, for the sake  
19 of argument, we accept that.

20 Now, your witnesses make an argument that, Well, throw  
21 the luminaire into the basket. We recognize it is load.  
22 Put it in the basket, anyway, because -- I call this 'don't  
23 make us send out another truck' argument to change a light  
24 bulb. It is efficient to throw it in the basket.

25 My question is: Legally, can we? If we have a  
26 finding of fact that it is load, can we throw it in the  
27 basket? If you would address that?

28 MR. RODGER: Thank you, sir.



1           MR. KAISER: I wonder if I could -- I am not sure who  
2 on the panel this goes to, but my question is: If the  
3 answer to the question I just put to Mr. Rodger was,  
4 legally, we can't throw it into the utility, it is load and  
5 there's been a finding of fact it is load, legally we can't  
6 do it - even if we wanted to, we can't do it -- who would  
7 do it, in that event? The existing company? Somebody  
8 else? A contractor? Who would do that?

9           MR. SARDANA: Mr. Kaiser, I think it could be handled  
10 via how we handle CDM currently, which is it is an  
11 ancillary business outside the rate base or outside the  
12 regulatory paradigm, and could still be serviced, then, by  
13 utility staff, and then an SLA could cover off any  
14 agreement between the two.

15          MR. KAISER: And I guess related to that, Mr. Sardana,  
16 I don't know what's involved in maintaining a luminaire,  
17 but, in my simple mind, it is changing a light bulb. But  
18 it may be some other things. Is that a discrete function  
19 now? I mean, are there people dedicated to that work?

20          MR. COOK: Yes, there are, sir.

21          We actually have a program that is a re-lamping, which  
22 is a cyclical type of effort that we do that focusses  
23 primarily on replacement of the light bulb, based on the  
24 mortality curve, which is generally five years.

25          MR. KAISER: So would I be correct that somebody's job  
26 is to drive around the city and find out what bulbs are out  
27 and fix them, change them?

28          MR. COOK: That's correct, sir. We have a night

1 patrol person that does that on a nightly basis, yes.

2 MR. KAISER: All right. Thank you.

3 Where are we in the -- are we at Board counsel?

4 MS. COCHRANE: Yes, Mr. Chair.

5 MR. KAISER: Any preliminary matters, Mr. Rodger, I'm  
6 sorry. Do we have these undertakings filed, by the way?  
7 Maybe you could do that right now.

8 **PRELIMINARY MATTERS:**

9 MR. RODGER: Yes, thank you, sir. Just a couple of  
10 things.

11 The first is to provide the responses to undertakings  
12 given yesterday, and they were J1.1, J1.2, and J1.3, and we  
13 have now handed copies out and the Board and parties should  
14 have those. That's the first thing.

15 Secondly, Mr. Cook would like to make one correction  
16 to the record, which he advised me of this morning, and  
17 that is on page 111 of yesterday's transcript.

18 And, Mr. Cook, this was an exchange you had with  
19 Mr. Mondrow about relationships between the streetlighting  
20 company and the LDC. And at line 10 on page 111,  
21 Mr. Mondrow asked you:

22 "Is there a joint use agreement between the  
23 affiliate and the utility?"

24 And in the context of the question, the agreement  
25 between THESI and THESL, and your answer is, "Yes, there  
26 is."

27 And I understand you want to clarify that?

28 MR. COOK: Yes. The reference that I was making to

1 was the services contract that provides for joint trench.

2 MR. RODGER: So this matter was also, it seems to me,  
3 dealt with in the response to undertaking J1.2; is that  
4 correct?

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

6 MR. RODGER: Maybe you could just give us a summary of  
7 what that answer says, just to clarify the record.

8 MR. COOK: It is in reference to the services  
9 agreement. We covered that earlier when we were talking  
10 about the joint trenching, installing the duct runs, and  
11 then having the streetlighting infrastructure installed.  
12 That is what that reference is to the services agreement.

13 Also, it refers to attachment to THESI poles and that  
14 there would not be an agreement between the parties for  
15 that activity.

16 MR. RODGER: Okay, thank you. The final matter,  
17 Mr. Chairman, is just on the issue of the valuation report  
18 that was prepared by Deloitte.

19 MR. KAISER: Yes.

20 MR. RODGER: I did manage yesterday morning to speak  
21 to Deloitte's counsel about this, and I also sent her the  
22 transcript and the Board's confidentiality rules.

23 She got back to me a couple of times yesterday, but at  
24 5 o'clock when I reported to all of the parties, she had  
25 still not received instructions yet on how Deloitte was  
26 going to proceed.

27 Part of her difficulties yesterday is that the  
28 Deloitte partner that authored the valuation report is now

1 retired, and she was scrambling to try and contact somebody  
2 else within the organization that she could get  
3 instructions from, and, as of 5 o'clock, she didn't have  
4 those instructions.

5 And just turning off my BlackBerry before we started  
6 today, there was no further e-mail. So I am in the Board's  
7 hands as to how you want to proceed, but I just don't have  
8 any other information other than that, sir.

9 MR. KAISER: Well, give us an update at the break. I  
10 think that is all we can do.

11 MR. RODGER: All right. Thank you. Those are all of  
12 the preliminary matters. Thank you.

13 MR. MACINTOSH: Mr. Chair, if I may?

14 MR. KAISER: Yes.

15 MR. MACINTOSH: Mr. Faye was planning to attend in  
16 person today, but when he called in and said he wasn't  
17 feeling well, I did encourage him to listen in.

18 MR. KAISER: Thank you. Before we proceed with Board  
19 counsel, you have -- the answers to the interrogatories  
20 have been circulated. Do any counsel have any questions on  
21 those?

22 MR. MONDROW: If I could, Mr. Chair?

23 MR. KAISER: All right, please proceed.

24 MR. QUESNELLE: It's not coming across.

25 MR. MONDROW: Is that better?

26 MR. QUESNELLE: It is not.

27 MR. MONDROW: I will try one more. This one must be  
28 working.

1 MR. QUESNELLE: Thank you.

2 MR. MONDROW: Thank you, Mr. Chair.

3 It is actually -- witnesses, I don't actually have  
4 questions arising from the - let me just grab my stuff -  
5 undertaking responses per se, but further to Mr. Rodger's  
6 request to Mr. Cook to clarify the transcript from Tuesday  
7 and undertaking response J1.2, I gather, then, that there  
8 is no joint use agreement between THESI and THESL in  
9 respect of the streetlighting assets, but there is a joint  
10 use agreement or some sort of cooperative agreement in  
11 respect of the trenching activity.

12 There was some discussion with Mr. Faye, I believe  
13 primarily, sir, the other day on trenching, and some of the  
14 witnesses were speaking about some of the logistical  
15 problems involved currently with the separation of the  
16 streetlighting system from the distribution system in the  
17 course of trenching.

18 So I wonder if it wouldn't be difficult if we might be  
19 able to have the trenching agreement that you referred to,  
20 Mr. Cook, that exists, so that at least in respect of the  
21 cooperative trenching activity, we could have a better  
22 understanding of the current legal relationship and,  
23 through that, the operational relationship.

24 MR. COUILLARD: Mr. Mondrow, it is actually part of  
25 the evidence that's been filed. I am just going to try  
26 to...

27 MR. MONDROW: Is it? Great.

28 MR. COOK: It is covered in schedule 9 of the services

1 agreement.

2 MR. RODGER: What tab is that, Mr. Cook, please?

3 MR. COOK: That is section --

4 MR. MONDROW: Is that section F, tab 19, schedule 4?

5 MR. COOK: Actually, it is tab 20, schedule 2, section  
6 F, tab 20, schedule 2.

7 MR. COOK: It is part of appendix A; it's covered in  
8 schedule 9 of appendix A.

9 MR. MONDROW: section F, tab 20, schedule 2, which is  
10 response to the Vulnerable Energy Consumers Coalition  
11 interrogatory?

12 MR. COOK: Yes, number 2.

13 MR. MONDROW: Is that right? I only have a one-page  
14 response, so maybe I am not looking at the right thing.  
15 Maybe Mr. Rodger could help. Well, it is in the record,  
16 sir, and you have the reference. I still can't find it,  
17 but it is probably me, so I will find it. Thank you very  
18 much.

19 MR. KAISER: Anyone else?

20 MR. DeVELLIS: Mr. Chairman, good morning. I will  
21 have questions with respect to Undertaking J1.3, however,  
22 what I would like to do is, I do have -- this is in  
23 relation to the streetlighting costs in the cost-of-service  
24 application. And what I think would be best, I have  
25 excerpts from the application that I would like to put to  
26 the witnesses, so I propose to do that at the break, is  
27 make copies of those and put those directly to the  
28 witnesses, because doing it out of context may be a little

1 bit difficult.

2 So with your leave, I would like to ask those after  
3 the break.

4 MR. KAISER: That's fine. Let's proceed on that  
5 basis.

6 MR. DeVELLIS: Thank you.

7 MR. KAISER: Board counsel ready to go?

8 MS. COCHRANE: Yes.

9 **CROSS-EXAMINATION BY MS. COCHRANE:**

10 MS. COCHRANE: The first question is just a  
11 clarification of the nature of this application, and to  
12 confirm that, in fact, is amended from what was originally  
13 filed. And in Mr. Kaiser's opening remarks, reference was  
14 made to the original application, that is cancelling the  
15 licence of THESL rather than assigning it to new THESL, and  
16 then -- but in Board Staff Interrogatory No. 3 the response  
17 indicates that your request is for a new licence for THESL,  
18 but the -- the amended request is asking leave to assign  
19 THESL's existing licence to new THESL and cancelling  
20 NewCo's distribution licence after that happens. I hope  
21 that was clear.

22 And I just wanted to confirm that the application has  
23 been amended and it is, as you have set out in response to  
24 Board Staff IR No. 3.

25 MR. RODGER: Yes, that's correct. In discussions with  
26 Board Staff, we decided to make this change.

27 So just to be clear, we originally sought to cancel  
28 the licences of both THESL and NewCo and the issuance of a

1 new licence to the newly amalgamated company, which we are  
2 referring to as new THESL. We are still asking the Board  
3 to cancel NewCo's license, but with respect to THESL's  
4 existing license, we're asking that just be assigned to the  
5 new amalgamated entity, if the Board approves the relief.

6 MS. COCHRANE: Thank you, Mr. Rodger.

7 Are there any other activities or approvals in  
8 addition to Board approval in this application that need to  
9 take place prior to closing of the transaction? Are there  
10 any, for example, ESA approvals or City of Toronto  
11 approvals?

12 MR. RODGER: No, there are not.

13 MS. COCHRANE: A question about the Affiliate  
14 Relationships Code. According to section 2.3.1.1:

15 "The term of a contract between an affiliate and  
16 the utility, including service agreements, shall  
17 not exceed five years, unless otherwise approved  
18 by the Board."

19 The service agreement currently in place with the city is  
20 for a period of 30 years. How can -- can the witnesses or  
21 perhaps your counsel address how new THESL proposes to deal  
22 with that?

23 MR. RODGER: Well, I think as Mr. Sardana said  
24 yesterday, under the proposed approach under the ratemaking  
25 regime, this can be dealt with under the existing contract,  
26 or by way of a revenue offset. But the end result will be  
27 the same.

28 So I think it is a matter that can be dealt with in



1 the rate case, and as I am sure you are aware, I believe it  
2 is under section 78 of the OEB Act, the Board isn't bound  
3 by the terms of any contract in any event, regardless of  
4 whether it is a services agreement or any contract that is  
5 a -- a utility has entered into.

6 MS. COCHRANE: Thank you. I have some questions now  
7 about ownership and demarcation. There's several  
8 references throughout the evidence that there is no clear  
9 demarcation point between the streetlighting and  
10 distribution systems. And we have looked at section 1 of  
11 Regulation 22, which defines ownership demarcation as the  
12 point at which the distributor's ownership of the system --  
13 sorry, the distribution system, including connection  
14 assets, ends at the customer. And we have heard in the  
15 evidence that this is an unsatisfactory situation because  
16 ownership demarcation point doesn't always coincide with a  
17 point of supply.

18 I would like to refer you to -- there is a package of  
19 documents that I would like to enter as an exhibit. It is  
20 the Board Staff documents brief. This was e-mailed to all  
21 of the parties yesterday and a hard copy is provided today,  
22 and I would like to make this Exhibit K2.1.

23 **EXHIBIT NO. K2.1: BOARD STAFF DOCUMENTS BRIEF.**

24 MS. COCHRANE: And -- and at tab 3 of this brief,  
25 there is -- it is ESA Bulletin DIB 07/05, dated November  
26 15, 2005. And it expands on the definition and the  
27 regulation with respect to ownership demarcation point.  
28 And about midway down the page, it sets out a number of

1 scenarios and states that:

2 "The location of ownership demarcation can be  
3 unique for each customer, and the following  
4 scenarios are typical."

5 And then it sets out some scenarios for residential,  
6 commercial, industrial, customers and then where equipment  
7 is customer-owned, and anyways, there is a number of  
8 scenarios.

9 So would you agree that the concept of a demarcation  
10 point seems to be a shifting concept in the case of most  
11 connections on the -- one the distributor system?

12 MR. LaPIANTA: No. In fact, it's -- for the vast  
13 majority of situations within the distribution system, the  
14 point of demarcation is clearly identified, particularly  
15 when we're entering customer's premises, in sub-grade  
16 vaults, vaults at grade level, in apartment buildings,  
17 condominiums. In the overhead system, it is obviously at  
18 the top of the service mast. It is a very, very different  
19 situation, a very dynamic situation when we -- when we  
20 reference the streetlighting system. That is the point of  
21 demarcation, which because of the unmetered scattered load  
22 connections, continually changes.

23 But for the most part in the distribution system, the  
24 demarcation point is very static.

25 MS. COCHRANE: Well, I would like to just discuss the  
26 example of a residential or commercial customer, where in  
27 some cases, the customer owns the transformer; in other  
28 cases, they don't. And this bulletin, you see that, you

1 know, the demarcation point changes, depending on, you  
2 know, whether the customer owns the transformer or the  
3 distributor. Supply point is the same, where the power --  
4 the supply is coming into the transformer, so --

5 MR. LaPIANTA: That's true. The demarcation point is  
6 different for both of the situations you have just  
7 described. But once that demarcation point is set, based  
8 on the fact on whether the customer owns the transformer or  
9 doesn't, that demarcation point never changes again.

10 MS. COCHRANE: Correct, but what I am suggesting to  
11 you is that the point of supply is the same, but the  
12 demarcation point is changing.

13 MR. LaPIANTA: In that particular situation, it has --  
14 it has changed, but it has changed once.

15 MS. COCHRANE: Right. And the -- and is that the only  
16 type of situation in which there is -- there is not a  
17 perfect alignment of point of supply and demarcation  
18 point? Or do you see that in other situations across the  
19 distribution system?

20 MR. LaPIANTA: Particularly in -- I mean I think it's  
21 fair to say that particularly in the downtown core, given  
22 the nature of the vast array of different types of  
23 standards and specifications and the way the distribution  
24 system has grown and buildings have been designed, the  
25 demarcation point, in general, is always where our incoming  
26 supply ends.

27 There is some visible break, whether it is a switch, a  
28 panel, something that separates the distribution assets

1 from the -- the customer assets. But in -- in general,  
2 those types of situations are easily -- are easily  
3 identified.

4 MS. COCHRANE: Thank you. Just to confirm the  
5 evidence -- I can't recall which witness gave it -- but on  
6 Tuesday the evidence -- the statement was made that if the  
7 streetlighting system is transferred to the distribution  
8 company, Regulation 22 would apply, and not the Electrical  
9 Safety Code. Did -- did I summarize that correctly?

10 MR. LaPIANTA: That's correct.

11 MS. COCHRANE: As you're undoubtedly well aware,  
12 Regulation 22 sets out some safety standards, which seem  
13 quite general in their description, but as you are aware,  
14 there is a lot of supplemental standards and guidelines,  
15 you know, for example, the ESA technical guidelines that  
16 are made under the Regulation, and that also lists numerous  
17 CSA and other standards that distributors must comply  
18 with. You know, so I just put it to you that my  
19 understanding is it a fairly stringent regime. I mean the  
20 technical standards are over 75 pages long, and there is  
21 hundreds, possibly hundreds of standards. It's a stringent  
22 regime, but the distribution company basically self-  
23 regulates. Is that a fair assessment?

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

25 MS. COCHRANE: Now, under the Regulation 22 in the  
26 technical standards, can you tell us if there is any  
27 references or specific standards for streetlighting  
28 equipment? You may not know this off the top of your head,

1 because there is hundreds of standards. You may want to do  
2 it by an undertaking, but if you do have an answer readily  
3 available, it would be helpful.

4 MR. LaPIANTA: If I understand the question correctly,  
5 you're asking if there is any streetlighting technical  
6 specifications that fall under the Regulation 22/04?

7 MS. COCHRANE: Correct.

8 MR. LaPIANTA: To the best of my knowledge, there  
9 aren't any explicitly. Each utility has its own  
10 streetlighting standards - construction standards, material  
11 standards - that they apply, but to the best of my  
12 knowledge, nothing specific under the Code -- under the  
13 Regulation, pardon me.

14 MS. COCHRANE: Thank you.

15 When we look at the Electrical Safety Code, a portion  
16 of which is contained in Board Staff's documents brief at  
17 tab 1, I am not going to read extensively from it, but I  
18 would just like to confirm that section 75 - section 75-000  
19 specifically - indicates that the scope of that section  
20 applies to, among other things, poles and pole-mounted  
21 electrical equipment.

22 Do I understand correctly this is the section of the  
23 Code that is applicable to streetlighting equipment not  
24 owned by a licensed distributor?

25 MR. LaPIANTA: Yes, that would be our understanding.

26 MS. COCHRANE: In addition to the section of the Code,  
27 there is ESA bulletins, for example, that clarify the  
28 standards and expectations the ESA has for streetlighting

1 equipment; is that correct?

2 MR. LaPIANTA: Yes. On a regular basis, the ESA will  
3 issue bulletins under the Code.

4 MS. COCHRANE: And, for example, at tab 2 of Board  
5 Staff's documents brief - I will just refer to it as  
6 Exhibit K2.1 - there is a brief from the ESA with respect  
7 to roadway lighting systems, Bulletin 30-9-1 dated April  
8 2002, which, given its vintage, may have been updated, but  
9 this is still on the ESA's website.

10 And this has some fairly detailed specifications as to  
11 how streetlighting is to be -- with respect to roadway  
12 lighting systems.

13 Is this a standard that THESI and THESL would follow,  
14 or does it have its own standards?

15 MR. LaPIANTA: Counsel, I don't profess to be an  
16 expert on the Code, but the way we interpret this is, this  
17 particular bulletin, if you will, or rule, for that matter,  
18 speaks actually to the installation of a receptacle,  
19 typically receptacles that are used for BIA lighting,  
20 things of that nature, in parks.

21 As a matter of fact, on page 2, or page 2 of 7 of the  
22 bulletin, it even goes as far as to clearly state that the  
23 requirements of section 75 don't apply to roadway lighting  
24 systems.

25 So this particular standard is intended to give third  
26 party non-LDCs a method by which they can safely connect  
27 some load that is not on the streetlighting system by way  
28 of a GFI.

1           If the utility were to undertake something like this,  
2   we would ensure that we had a standard that was at least as  
3   rigorous or more rigorous than this, and we would seek ESA  
4   consultation on that effort.

5           MS. COCHRANE: Just looking at page 1 of this  
6   bulletin, it says:

7           "For purposes of this document, definition of  
8           roadway lighting system is a system of  
9           luminaires, poles, sign luminaires, underpass  
10          illumination, cables, power supply equipment..."

11          So on and so forth. And so I had understood it as  
12   being, you know, this is a description of a possible  
13   streetlighting system and decorative lighting systems, but  
14   is it your evidence that this is not something that I'll  
15   say -- say is within THESI's jurisdiction, that THESI would  
16   have applied or followed in respect of any type of lighting  
17   installations of this nature?

18          [Witness panel confers]

19          MR. COOK: It appears to be clearly a definition of  
20   roadway lighting, in review of the document. There are  
21   similar apparatus that we use for this type of -- nature of  
22   work.

23          MS. COCHRANE: Sorry. Sorry, the question, to  
24   clarify, was would you -- have you ever reviewed this  
25   document before this proceeding?

26          MR. COOK: I have seen this document, yes.

27          MS. COCHRANE: So is it something that THESI would  
28   have implemented and used?

1 MR. COOK: Yes. There's -- the diagrams that I am  
2 reviewing here are similar to what we do on the  
3 streetlighting system, yes.

4 MS. COCHRANE: Now, the ESA hasn't participated in  
5 this hearing, but are you able to give us any indication as  
6 to whether the ESA has any views as to which standards  
7 should apply to streetlighting, regardless of whether, you  
8 know, it is owned by a distribution company or another  
9 entity?

10 MR. LaPIANTA: I mean, I can't speculate for what the  
11 ESA feels that the streetlighting standards should. But  
12 what I can confirm is that we're working very closely with  
13 the ESA, since the contact voltage remediation effort, to  
14 look at the street light system as a whole, to look at the  
15 handwell system as a whole, and to come up with standards  
16 that protect the public interest and are mutually agreeable  
17 to both parties.

18 MS. COCHRANE: It is my understanding there is a  
19 symposium on August 20th of this year the Toronto Hydro --  
20 THESI and/or THESL attended. So various presentations were  
21 made by the ESA and Toronto Hydro. What did you take away  
22 from that symposium as to whether the ESA has any views as  
23 to, you know, whether -- who should own streetlighting  
24 systems and to what standards they should be serviced?

25 Like, does the ESA have a preference for Code,  
26 complying with the Electrical Safety Code?

27 MR. LaPIANTA: Counsel, I didn't personally attend  
28 that symposium, but from the feedback that I got, clearly,



1 yes, the ESA does have their views on what technical  
2 standards or what a standard should contain or be that are  
3 not always aligned with utility standards. But that  
4 doesn't mean that one standard or the other is necessarily  
5 better.

6 Engineers are what they are, and they will always  
7 disagree on what the standard should be, but, in the end, I  
8 think both parties have a common interest at heart, which  
9 is to preserve public safety. I think in the end, the  
10 standard will do just that. But, yes, they have their own  
11 preferences as to how things should be done.

12 MS. COCHRANE: The ESA's preference, I understand, is  
13 that all future streetlighting installations should comply  
14 with the Code?

15 MR. RODGER: What's the source of that, please?

16 MS. COCHRANE: The ESA symposium.

17 MR. RODGER: So hearsay? There is no document you can  
18 refer us to or any source?

19 MS. COCHRANE: No, there was a -- there is a slide  
20 presentation that the ESA gave at that symposium which we  
21 can produce into evidence, if the panel would like.

22 MR. KAISER: I think, Ms. Cochran, this is really --  
23 the witness wasn't there. We don't have anything from the  
24 conference. This is getting into triple hearsay.

25 MS. COCHRANE: Fair enough, Mr. --

26 MR. KAISER: I don't know where it is going to take  
27 us.

28 MS. COCHRANE: The ESA isn't a participant.

1           MR. KAISER: I know. And they have chosen not to, and  
2 I don't think we can figure out through third parties what  
3 their position is.

4           MS. COCHRANE: Okay. I just have a couple of  
5 questions about the value of the assets.

6           The assets were sold by the city to THESI in 2005 for  
7 60 million, and now it, if I understood correctly, will be  
8 sold for 66 million. Do I have those numbers right?

9           MR. COUILLARD: I think the number is more likely to  
10 be around 62-1/2-million dollars.

11          MS. COCHRANE: Oh, okay.

12          So the -- I wonder if you could perhaps just give us a  
13 better fix on that, because now it's different. Six-  
14 million dollars is a 10 percent difference, and two-and-a-  
15 half-million dollars is less.

16          Maybe you can -- my question is just about what value  
17 has been added or improvement's been made to the system to  
18 justify an increase, whether it is 10 percent or less than  
19 five percent.

20          MR. COUILLARD: Well, as we -- as we stated in our --  
21 in our evidence, the \$60-million purchase price was the  
22 basis for the book value when we acquired the asset.

23          And then over the last four years, so 2006, -7, -8  
24 and -9, there has been additions to the asset and there has  
25 been depreciation.

26          So it's -- it's purely, you know, an accounting  
27 exercise, if I might say, of whatever assets we have added  
28 versus the depreciation that drives the amount.

1           And so what our evidence also says is that the  
2   balance will be adjusted at the time of the transaction to  
3   reflect the current book value at that time, which will be,  
4   you know, reflecting the depreciation.

5           So if we're saying, if the -- as an example, if the  
6   Board was to approve our application and the effective date  
7   of the transaction was to be December 31st, 2009, then we  
8   would take the net book value at December 31st, 2009. So  
9   it would include the depreciation for 2009, and then the  
10   additions of the assets.

11          MS. COCHRANE: Has there also been an increase in  
12   liability for the streetlighting system between 2005 and  
13   present?

14          MR. COUILLARD: Nothing material.

15          MS. COCHRANE: What's the amount that is material for  
16   your purposes?

17          MR. COUILLARD: Well, I think we have provided as  
18   well as evidence a list of all the current actions against  
19   streetlighting. So that would be what I would say the  
20   liabilities that would be related to the streetlighting  
21   business.

22          MR. SARDANA: And -- and Ms. Cochrane, if I can just  
23   add to Mr. Couillard's remarks, those are, of course,  
24   contingent liabilities. They haven't -- they're still --  
25   some of them have gone to litigation. Some of them are not  
26   in litigation yet. But they haven't -- you know, they're  
27   not recognized yet.

28          MS. COCHRANE: And in terms of how these liabilities

1 will be treated going forward, in response to Board Staff  
2 IR No. 9C, you have indicated that the liabilities  
3 associated with legal proceedings and claims related to  
4 streetlighting assets will not be included in future  
5 revenue requirements.

6 However, in evidence the other day, it was indicated  
7 that liabilities arising from these claims would be  
8 transferred from THESI to THESL.

9 Can you just clarify whether they will or will not  
10 be?

11 MR. SARDANA: Yes. I think that is the point that  
12 warrants clarification.

13 I think our evidence from the other day stands, that  
14 we will have the streetlighting class, the rate class  
15 account for those liabilities directly, or they will be  
16 charged directly to that rate class.

17 MS. COCHRANE: So they -- will they be included in  
18 future --

19 MR. SARDANA: So --

20 MS. COCHRANE: Sorry, do you want to clarify?

21 MR. SARDANA: Pardon me. In other words, if some of  
22 these claims, for example, go to litigation and get  
23 settled, we currently track those directly as part of the  
24 streetlighting program, and it would be the case that we  
25 would directly allocate those costs to the streetlighting  
26 rate class, streetlighting and USL rate classes.

27 And -- and of course, as we have also stated the  
28 other day, our insurance program, our liability program

1 currently covers off those claims with -- with a maximum  
2 exposure of about 900,000. And that is to do with the  
3 nine -- nine claims that we have currently before us that  
4 are either actively being litigated or -- or in progress.

5 MS. COCHRANE: Just to follow up a clarification,  
6 then, again, in response to Board IR 9C, it was indicated  
7 that the -- these claims would not be included in future  
8 revenue requirements.

9 But if I am understanding correctly now, it seems  
10 that they -- they will be.

11 MR. SARDANA: Well, I think, again to clarify, it is  
12 the existing claims that we're talking about that we know  
13 about. We are, of course, not in the business of  
14 forecasting what is going to come. We have no basis for  
15 knowing that.

16 We do have a claims budget that we bring before the  
17 Board for approval in each rate case. But again, as I  
18 mentioned, in the future, if there is a claim that comes in  
19 that emanates from a problem with the streetlighting  
20 system, we are able to directly track that and then  
21 directly allocate it to that rate class, as we do today.

22 MR. KAISER: But today, do you do that with any other  
23 rate class? Allocate lawsuits to different customer  
24 classes?

25 MR. SARDANA: I would have to check that, but my  
26 understanding is that when we can, we do. But typically,  
27 they're commingled with all of our other claims history.

28 MR. COUILLARD: Mr. Chair, if I might -- if I may

1 add, it is part of our insurance program. So most of the -  
2 - what's included in our revenue requirement is the cost of  
3 our insurance program on an annual basis, which is really  
4 forecasting the costs in the future of our insurance  
5 program.

6 So when we say that the claim or the outcome of those  
7 claims wouldn't be included in our revenue requirement,  
8 that is correct. What will be included in future revenue  
9 requirement is the cost of our insurance program, which is  
10 currently included in our -- in our streetlighting  
11 operating expense, as filed as evidence. The same way that  
12 in our electricity distribution application, we always have  
13 an amount to support our insurance program.

14 And -- and so, you know, there is no -- our intent is  
15 not to go back and if we look at the list of claims that's  
16 there and say: Well, we finally -- we're out of pocket and  
17 we should do a special application because those claims  
18 happened in the past and we should seek reimbursement for  
19 those claims, I think those claims happened in the past and  
20 whatever amount, we have paid the premium already for those  
21 particular claims because they have already happened.

22 So I think it would be fair to say that any future  
23 claim that we might have against the streetlighting, while  
24 there will be a balance in our revenue requirement that  
25 will be related to insurance program that would cover those  
26 claims.

27 MR. KAISER: But you must have -- well, I don't  
28 know. Do you have a general insurance policy that claims -

1 - covers these types of claims wherever they might occur  
2 within the company? Or do you have a specific insurance  
3 policy in this case with respect to claims that relate to  
4 streetlighting?

5 MR. SARDANA: We have a general insurance policy.  
6 The streetlighting company is a named insured under that  
7 policy, as are all our other companies.

8 So for, you know, a day in the life of a claim, if  
9 you will, if your claim comes in and we know it is a  
10 streetlighting claim, it gets tagged in our system as a  
11 streetlighting claim, and then there's an intercompany  
12 settlement with the streetlighting company when it comes to  
13 settling that claim.

14 So -- and that is typically how we treat all other  
15 claims, as well, that come in. If we can identify them,  
16 they get tagged in that manner and then allocated.

17 MR. KAISER: Well, now you do it because they're  
18 separate corporations. But going forward, would you  
19 continue to do that?

20 I think that is the question that the Counsel is  
21 asking you.

22 MR. SARDANA: Yes. And I think going forward, I  
23 think it would be fair to say, as Mr. Couillard has said,  
24 that we would be looking at it as a claims -- as an  
25 insurance program. And the streetlighting company, if this  
26 relief is obtained, would be part of that distribution  
27 company.

28 But, again, then you get into the nuances of rate

1 design and rate -- and cost allocation. And I think what I  
2 am postulating is that we are able to track the costs  
3 associated with certain claims, and we can certainly do so  
4 to the extent that we can.

5 This is one of those cases where we can.

6 MR. QUESNELLE: Just to clearly understand that,  
7 Mr. Sardana, when you say that there will be an  
8 intercompany --for instance, the current situation where  
9 you're tracking a claim, you tag it as a streetlight claim,  
10 and then you say there is an intercompany reconciliation of  
11 the outcome.

12 MR. SARDANA: Yes.

13 MR. QUESNELLE: What are you reconciling? Is it  
14 the -- are you actually allocating portions of the  
15 insurance premium? How...

16 MR. SARDANA: We do both. There's an insurance  
17 premium allocation that is done for all companies, and then  
18 there are also settlements of claims that are allocated to  
19 THESI in this case. The THESL portions are, of course,  
20 maintained within the THESL company. But if there is a  
21 claim that comes in from streetlighting -- again, to stay  
22 with our example -- that then goes to settlement, that is  
23 also charged to the streetlighting company, then.

24 MR. QUESNELLE: So that would be claims over and  
25 above the insurance?

26 MR. SARDANA: Well, it would be claims within our  
27 deductible, so over and above, of course, the insurance  
28 program covers it.



1 MR. QUESNELLE: Oh, okay.

2 MR. SARDANA: And for which the streetlighting  
3 company shares in the premium.

4 MR. QUESNELLE: I wasn't catching the nuance with the  
5 deductible, sorry. Yeah. Thanks.

6 MS. COCHRANE: Just to clarify what the intent is  
7 with respect to proposed rate treatment going forward,  
8 there was some, it appears, inconsistent evidence as to how  
9 new THESL would deal with this. And you know, in one  
10 instance on the MAAD application, you have indicated that  
11 new THESL would update its 2010 EDR filing. Then in  
12 response to Board Staff IR No. 4B, you have stated that you  
13 anticipate applying for -- in some future rate filing,  
14 without any specificity, and then in response to ECAO's IR  
15 No. 5C, you stated that streetlighting services would  
16 continue to be covered by the existing service agreement  
17 with the city, and then you would establish -- apply for  
18 new rates in a 2011 cost-of-service rates application.

19 So I just would like to clarify whether you will be  
20 applying for -- whether new THESL, if this is approved,  
21 would be applying for a new cost-of-service rate, and, you  
22 know, would it be as an amendment to its 2010 cost-of-  
23 service application, or would it be in 2011 or some later  
24 date? Can you just clarify that, please?

25 MR. SARDANA: Sure. Ms. Cochrane, I think I stated  
26 the other day it depends on the timing of this decision.

27 As you know, or you may know, our 2010 application is  
28 now firmly on a time path, with a hearing set for either

1 the middle of January or early February.

2 This decision may come at a later date and may not  
3 allow us to update our cost-of-service application for  
4 this. I think that is really why we stated that it could  
5 come at a later date or in a future rate filing.

6 Depending on the time of this decision and the time of  
7 our 2010 rates application, we will try, if time  
8 permitting, to fold this within that application or to fold  
9 the cost of service within that. But it could also work  
10 where we come in with a separate, smaller cost of service  
11 filing for this, and then add that at a later date either  
12 at a rate rider, or simply carry on as we have been with  
13 the revenue stream from the city coming in as a revenue  
14 offset, and then updating everything in a 2011 cost of  
15 service rate filing in a more comprehensive manner.

16 I don't think we have landed on a course of action  
17 yet, but there are several courses that are, in my mind,  
18 workable.

19 MS. COCHRANE: So if you -- if you haven't landed on a  
20 particular course of action, are you able to tell us what  
21 would be the impacts on rate base and revenue requirements  
22 at this point in time?

23 MR. SARDANA: Again, I think we have this on the  
24 record. The revenue requirement consequence is about  
25 \$17.4 million from the streetlighting company, if the  
26 entire relief is -- relief sought is obtained.

27 The revenue stream that we currently get from the city  
28 and other sources is just over \$17 million, and there is a

1 revenue deficiency of about \$350,000.

2 Now, again, that is based on our early numbers. They  
3 will obviously be fine-tuned when we have the final net  
4 book value, and then derive a final rate base for the  
5 streetlighting portion, and the numbers could change around  
6 a bit, but we don't think it is going to be any larger than  
7 the \$350,000.

8 MS. COCHRANE: Okay.

9 In response to Board Staff IR 5B, you have indicated  
10 that the main costs that will be directly allocated to  
11 streetlighting and unmetered scattered load class will be  
12 in the following: Distribution planned accounts, which  
13 are numbers 1808 and 1803 to 1845; cumulated and ongoing  
14 depreciation accounts; expense accounts and revenue  
15 accounts.

16 Do you anticipate that these accounts would need to  
17 have a sub-account structure so that the sub-account would  
18 be directly allocated to street light service and other  
19 sub-accounts would be allocated normally to all classes?

20 MR. SARDANA: We believe that is an efficient way of  
21 doing it, yes.

22 MS. COCHRANE: Do you have any idea at this point  
23 what -- could you provide a description or definition of  
24 those sub-accounts or how you would collect data to be  
25 entered into the sub-accounts?

26 MR. COUILLARD: Well, Ms. Cochrane, I think we would  
27 look -- work with our ERP system setting up work orders,  
28 and then having different subset of account, depending on

1 the type of asset. So in the case of the depreciation  
2 accounts, we will split them into different assets.  
3 Categories coming to mind, obviously the poles, the -- it  
4 could be a different -- like, for the luminaires, there  
5 could be a different line for the lamp, there could be a  
6 different line for -- so I think it could be based on the  
7 expected life and the different type of assets.

8 So we could do a sub-account, a bit in the same way we  
9 do with the distribution company where we track assets by  
10 different classes.

11 Then any type of work, in order to be able to directly  
12 allocate them, then we would have work orders. If one of  
13 the crew in Rick's department, Mr. Cook's department, goes  
14 and work on a streetlighting assignment, then they would  
15 charge their time and the material to a work order, and the  
16 work order will be included in our financials.

17 As we file our triple R filing every year, there would  
18 be a way for staff or for members of the Board to review  
19 the type of expenditures that are related to  
20 streetlighting.

21 MS. COCHRANE: Can you describe -- now, with respect  
22 to USL customers, what is THESL's current cost allocation  
23 methodology?

24 MR. SARDANA: Again, you know, I don't have those  
25 details, unfortunately, with me, but it conforms entirely  
26 to the Board's cost allocation model.

27 Costs are identified as USL costs, and then allocated  
28 to that rate class.

1 MS. COCHRANE: And if the transfer is approved to New  
2 THESL, would New THESL be providing any additional services  
3 to USL customers, in addition to distribution services?

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

5 MS. COCHRANE: So would this class be -- the USL  
6 customers, would they be affected by the transaction in any  
7 way?

8 MR. SARDANA: Again, when we looked at the revenue  
9 deficiency, there was a very, very small allocation to  
10 that -- revenue deficiency to that rate class, as well. I  
11 think it was in our preliminary calculations. 0.51 percent  
12 was the rate impact to that class.

13 But, again, we would do a comprehensive cost of  
14 service allocation to both of those classes, and I think  
15 that number will change, but not materially off that.

16 MS. COCHRANE: Okay. Just a final area I am going to  
17 cover is the impact of the proposed transaction on THESL's  
18 financial position, and, again, there is just some  
19 inconsistent figures that were provided in response to  
20 interrogatories.

21 In one case, you have indicated that rate base would  
22 increase by -- by \$4 million, so the rate base would be  
23 68 million. In another case, you indicated it would be  
24 62.5.

25 So I just wonder if you could clarify, you know, what  
26 is the amount that would be added to rate base.

27 MR. COUILLARD: The amount that would be added to rate  
28 base will be the net book value at the time of the

1 transaction. So the amount that we had in there were a  
2 different point in time, either the actual at the end of  
3 the year or the forecasted amount at a period that we would  
4 have expected the deal to happen -- the transaction to  
5 happen.

6 So depending on final timing of the decision, and then  
7 we would have our transfer agreement coming into play, and  
8 then it would be strictly a net book value, which is based  
9 on the purchase price of \$60 million, less depreciation,  
10 plus additions that happen throughout the year since the  
11 purchase of the streetlighting assets.

12 MR. KAISER: The 62.5 was at what date, again?

13 MR. COUILLARD: It was included in the working capital  
14 allowance, as well. So the 62.5 was like our forecast of  
15 the net book value, including working capital allowance at  
16 the date of the transaction, that we had forecasted to be  
17 at the end of this year.

18 MR. KAISER: All right. So that is your forecasted  
19 net book value at December 31st?

20 MR. COUILLARD: Yes, yes.

21 MS. COCHRANE: Just one question with respect to the  
22 undertaking response J1.1, where you have provided a  
23 breakdown of additional revenues.

24 In the evidence on day 1, you indicated that there  
25 were also cable attachments to the poles, and where would  
26 that be indicated in this undertaking response?

27 MR. COOK: I can walk you through that table, if you  
28 wish, Ms. Cochrane.

1           The city service fee I think is self explanatory.

2   Deco was a design construction opportunity that we were  
3   attempting to pursue with greenfield development. BIA is  
4   the business improvements areas where we do decorative  
5   lighting and different types of activities for them.

6           Claims is the revenue that is generated from when we  
7   have poles that are damaged. The police CCTV cameras is  
8   work we do for Toronto Police Services.

9           Relocates are the requests of private individuals that  
10   perhaps would like to widen their driveway.

11          Film companies approach us in order that we can  
12   control the lighting system, allowing them to film in the  
13   evening.

14          And the Interco WiFi is the work we currently do for  
15   Cogeco since the telecom business has been transferred to  
16   them.

17          MS. COCHRANE: So the Interco WiFi is the Cogeco --

18          MR. COOK: That's correct, yes.

19          MS. COCHRANE: Thank you. Those are all of my  
20   questions. Thank you, gentlemen.

21          MR. KAISER: Thank you. Mr. DeVellis are you ready to  
22   proceed or do you need time? I guess you need time to make  
23   copies.

24          MR. DeVELLIS: I had anticipated making the copies at  
25   the break.

26          MR. KAISER: Why don't we take the break now, then,  
27   and you can make the copies and finish up?

28          MR. DeVELLIS: Thank you.

1 --- Recess taken at 10:39 a.m.

2 --- Upon resuming at 11:21 a.m.

3 MR. KAISER: Please be seated.

4 Mr. DeVellis, do we have your handouts this morning?

5 MR. DeVELLIS: Yes, we do, sir. I left a package of  
6 documents on Board Staff's desk there.

7 MR. KAISER: All right. Let's see if we can get them.

8 MR. DeVELLIS: It's actually just one page, double-  
9 sided.

10 [Document passed out to Board Members.]

11 MR. KAISER: And this, Mr. DeVellis, is from Toronto  
12 Hydro's 2010 application, is it?

13 MR. DeVELLIS: Yes. It's an excerpt from EB-2009-  
14 0139, two pages from their evidence.

15 MR. KAISER: Whose evidence is this? Do you know? I  
16 suppose you don't know who the witness is?

17 MR. DeVELLIS: No, I'm afraid not. But it is the  
18 capital evidence. That's the -- so the first side is  
19 Exhibit D1, tab 9 schedule 1; that is the capital  
20 expenditure section of the application. And the flip side  
21 is Exhibit F1, tab 1, schedule 3 from the application; and  
22 that is their operating expense section of the  
23 application. Of course the witnesses can confirm that for  
24 me, but...

25 And perhaps we can get an exhibit number?

26 MR. KAISER: Yes.

27 MS. COCHRANE: That will be Exhibit K 2.1.

28 MR. DeVELLIS: 2.2?



1 MS. COCHRANE: Sorry.

2 **EXHIBIT NO. K 2.2: TWO-PAGE EXCERPT OF EVIDENCE FROM**  
3 **EB-2009-0139.**

4 MR. KAISER: Thank you.

5 MR. DeVELLIS: So I am going to -- well, first of all  
6 start with your undertaking response, if you don't mind.  
7 And so basically, you said that the distribution and  
8 streetlighting assets are commingled, and then all of the  
9 costs proposed in the 2010 EDR application related to  
10 streetlighting are for inspection and repair of  
11 standardization of distribution plant.

12 So that's -- so basically you're saying all of the  
13 costs are for the distribution -- the existing distribution  
14 plant and not the streetlighting -- what is now the  
15 streetlighting assets.

16 MR. LaPIANTA: That's correct.

17 MR. DeVELLIS: Okay. And so I just wanted to ask  
18 about that, because when I read the evidence, it seemed  
19 like that that was not the case. So maybe you can clarify  
20 that, and that's why I wanted to put the actual evidence to  
21 you that way. We can have a more fruitful discussion,  
22 hopefully.

23 MR. LaPIANTA: Certainly. The -- let me preface my  
24 response by saying that none of the panel members had  
25 actually -- need a detailed purview of oversight into the  
26 development of this content.

27 MR. DeVELLIS: Okay.

28 MR. LaPIANTA: In other words, we're not -- we weren't

1 responsible for the development of the particular portion  
2 of the application.

3 But I am going to rely on my experience from the  
4 contact voltage to -- to, I think, answer your question.

5 MR. DeVELLIS: Okay.

6 MR. LaPIANTA: In the utility industry we regularly --  
7 regularly use the words "streetlighting circuits" when in  
8 fact we're referring to the low-voltage circuits, the  
9 122/40, which in fact feed or supply --

10 MR. DeVELLIS: Okay. Well, that's what I'm going to  
11 ask you about.

12 MR. LaPIANTA: -- the streetlighting circuits.

13 MR. DeVELLIS: Okay.

14 MR. LaPIANTA: This investment here, keep in mind that  
15 of the some-15,000 handwells that were inspected, two-  
16 thirds of those handwells actually belong to Toronto -- to  
17 THESI -- to THESL. And so the costs here are required to  
18 in fact replace cable, underground, secondary, 122/40, to  
19 the supply points of the streetlighting circuits, and to a  
20 large extent remediate the some-10,000 handwells that are  
21 actually -- belong to Toronto Hydro.

22 MR. DeVELLIS: Okay. Well, you may have already  
23 answered, in your preface that you may have already  
24 answered some of the questions I was going to ask, but why  
25 don't we just turn briefly, then, to the exhibit? And we  
26 will start with the -- what I have had as the first side,  
27 is the Exhibit D1, tab 9 schedule 1 of Exhibit K2.2.

28 MR. LaPIANTA: Yes.

1           MR. DeVELLIS: So this is the -- I guess the capital  
2   portion of your evidence. And under "Cable  
3   standardization" you say:

4            "Inspections performed during the 2009 contact  
5            voltage emergency indicate that streetlighting  
6            cable installation is breaking down and is in  
7            poor condition."

8           And then later, down around line 13, you say:

9            "This investment, estimated at \$5.2 million, will  
10          be used to initiate a proactive program to  
11          identify and replace end-of-life streetlighting  
12          cable."

13          So -- and I asked you earlier, when we were during the  
14   break, if you had the -- your slides from yesterday handy.

15          MR. LaPIANTA: Yes.

16          MR. DeVELLIS: Slide 5. Do you have that? Can you  
17   turn that up for us?

18          So where would the streetlighting cable installation  
19   be on this diagram?

20          MR. LaPIANTA: In general, it would be up to and  
21   including the LDC chamber.

22          MR. DeVELLIS: Up to the -- so nothing past the LDC  
23   chamber, is what you're saying?

24          MR. LaPIANTA: With the exception of -- if beyond that  
25   LDC chamber we, in fact, continue the secondary main bus,  
26   so the Toronto Hydro or THESL 122 voltage -- 122/40 low-  
27   voltage circuits, those would be included. But if it was  
28   beyond the LDC chamber and was exclusively streetlighting,

1 that does not include it in these costs.

2 MR. DeVELLIS: Okay. All right. And then on the flip  
3 side, we have an excerpt from your operating expenses, and  
4 that is Exhibit F1, tab 1, schedule 3. And beginning at  
5 line 13, the highlighted portion, you say:

6 "The \$2.3-million increase in costs related to  
7 its overhead and underground distribution  
8 assets..."

9 MR. LaPIANTA: Yes.

10 MR. DeVELLIS: Is that right?

11 "...is attributable primarily to the  
12 streetlighting verification program in  
13 preparation for the transfer of streetlight  
14 assets to THESL."

15 So that in particular sounded to me like it had to do  
16 with this application, because it was in preparation for  
17 the transfer.

18 MR. LaPIANTA: It is in preparation for the transfer,  
19 but let me explain that.

20 One of the difficulties we found during the contact  
21 voltage exercise was the absence of records, which showed  
22 where the Toronto Hydro low-voltage 122/40 circuits  
23 actually existed, where they emanated from and where they  
24 eventually connected to.

25 In anticipation, regardless of whether we - these --  
26 this application was successful, we felt it was prudent  
27 moving forward, given the -- the experience from the  
28 contact voltage, that we started to verify, in fact, where

1 these circuits were, where they were located, and to  
2 represent them in our ERP system, as we would the rest of  
3 the primary distribution system.

4 MR. DeVELLIS: You're saying this is work that's  
5 really for the distribution system that you would have had  
6 to do anyway --

7 MR. LaPIANTA: Well, we are going to do it now,  
8 because historically we've never really maintained records  
9 of the secondary distribution. And now we feel that that  
10 is prudent. We need to know where the circuits are; we  
11 need to know where they're connected. And that's why we're  
12 doing this.

13 MR. DeVELLIS: Okay. Thank you. Those are my  
14 questions. Thank you, Mr. Chairman.

15 MR. QUESNELLE: Could I just add on to this, while the  
16 slide is up, just to assist me in giving some clarity on  
17 this?

18 And Mr. LaPianta, you just mentioned that typically  
19 the cables that are referred to in the distribution  
20 application, the cost-of-service application that you're  
21 referring to, are the ones that would come up to and feed  
22 the LDC chamber, unless there was THESL conductors,  
23 secondary conductors that went beyond that. And that would  
24 be determined as to whether or not there were things other  
25 than streetlights on that circuit beyond. I guess what I  
26 am getting at, yeah, if in this particular case, slide 1 --  
27 thank you.

28 MR. Cook -- in this particular case, you're suggesting

1 that those are owned by THESI and therefore they're not  
2 included in the comments or cost estimates that are in  
3 the -- your distribution cost of service.

4 MR. LaPIANTA: That's correct.

5 MR. QUESNELLE: Okay. If we can go back to slide 5,  
6 from what you just said, are you suggesting that there is  
7 never a situation that THESI owns a line like this?

8 MR. LaPIANTA: No. It does exist. I guess the point  
9 I wanted to make that it's not 100 percent all the time. I  
10 will give you an example.

11 It could have been that on this particular boulevard,  
12 the streetlights never existed previously; they were  
13 actually on the opposite side of the street. And so  
14 there -- it is regular that on both sides of the street at  
15 times there's a handwell system.

16 MR. QUESNELLE: Mm-hmm.

17 MR. LaPIANTA: So through development, the street  
18 lights could have been, for whatever reason, development on  
19 the other side of the street decided to move to this side  
20 of the street, our secondary mains would continue to  
21 exist. We would just then connect them from the handwell  
22 to the streetlight.

23 MR. QUESNELLE: Okay. I just have to be clear that we  
24 haven't been at cross-purposes the last couple of days  
25 here.

26 The scenario where you're suggesting that there is  
27 confusion for the -- your own employees, THESI employees  
28 and the ESA, emanates from the fact that there are both

1 scenarios that are possible, where all of the circuitry  
2 downstream of the LDC chamber could be either/or, in that  
3 this telephone booth could be served from a THESI-owned  
4 streetlighting conductor. Is that true?

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

6 MR. QUESNELLE: Okay. So the work that you're  
7 discussing in the cost-of-service application will only be  
8 for THESL-owned conductors that you refer to as  
9 streetlighting, because of their low voltage?

10 MR. LaPIANTA: That's correct.

11 MR. QUESNELLE: Thank you. Okay.

12 MR. KAISER: Yes, Mr. Buonaguro?

13 MR. BUONAGURO: Thank you. Just one quick  
14 clarification. You mentioned in your answers to  
15 Mr. DeVellis, contact voltage and handwells, and that some  
16 of the costs in the 2010 cost-of-service application were  
17 for remediating handwells.

18 And my understanding, through the contact voltage  
19 application, was that all of the remediation costs  
20 associated with, for example, handwells were included in  
21 that application.

22 So I just wondered if you could clarify whether or not  
23 there is overlap or whether there is remediation costs  
24 associated with the contact voltage situation that weren't  
25 included in the contact voltage proceeding, or what did you  
26 mean by remediation that...

27 MR. LaPIANTA: Well, arising from the contact voltage,  
28 there is certain follow-up work that needs to be done to

1 some of these handwells. Keep in mind that the original  
2 intent of the contact voltage exercise was to make safe.

3 So by going out and making safe doesn't necessarily  
4 mean there isn't follow-up work that needed to be done. So  
5 the costs that were in the contact voltage was for that  
6 initial exercise. What needs to be done in the future now  
7 is there could be upgrades to the lid, the connectors,  
8 whatever the case may be.

9 MR. BUONAGURO: All right. So if I remember  
10 correctly, in the contact voltage proceeding, which I think  
11 was EB-2009-0243, I believe, the remediation costs in  
12 aggregate were something in the order of \$7 million; \$6 or  
13 \$7 million?

14 MR. LaPIANTA: Subject to check, I think it is  
15 somewhere around 7.6. The balance is scanning, I believe.

16 MR. BUONAGURO: Thank you. It doesn't have to be  
17 accurate, just for reference.

18 And then in the 2010 cost-of-service application,  
19 looking at Exhibit K2.2, these additional remediation costs  
20 would be where? Maybe you can tell me. Is that the  
21 5.2 million that will be used to initiate a proactive  
22 program to identify and replace end-of-life streetlighting  
23 cable?

24 MR. LaPIANTA: Again, subject to check, they would not  
25 be in schedule 3, the preventive maintenance.

26 If they were included, they would be in tab 9 as part  
27 of the 5.2.

28 MR. BUONAGURO: Okay. So some portion of the 5.2 is



1 actually an extension of the remediation that took place in  
2 the -- that were costs that you're seeking recovery in the  
3 contact voltage --

4 MR. LaPIANTA: On THESL equipment?

5 MR. BUONAGURO: On THESL equipment.

6 MR. LaPIANTA: Yes.

7 MR. BUONAGURO: Now, in the contact voltage  
8 proceeding, 100 percent of the remediation costs were  
9 allocated to the streetlighting and USL classes -- sorry,  
10 the application sought and is seeking to recover those  
11 costs from streetlighting and USL?

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

13 MR. BUONAGURO: And I only have this little excerpt  
14 here, but is that similar for this, in this case, these  
15 remediation costs? I guess they're called the extended  
16 remediation costs.

17 MR. SARDANA: Mr. Buonaguro, we might have to take an  
18 undertaking on that.

19 MR. BUONAGURO: That's fine. I know it just sort of  
20 arose here at the end, so I am happy to take an undertaking  
21 to clarify that.

22 MR. KAISER: All right. Could we have a number for  
23 that, please?

24 MS. COCHRANE: That will be J2.1. Do you want to just  
25 state it on the record, Mr. Buonaguro?

26 **UNDERTAKING NO. J2.1: TO CONFIRM HOW CONTACT VOLTAGE**  
27 **LEVEL III EMERGENCY COSTS ARE ALLOCATED.**

28 MR. BUONAGURO: To clarify or to confirm how the --

1 what I have called the extended remediation costs coming  
2 out of the contact voltage level III emergency situation  
3 are being allocated in your 2010 cost of service, i.e., are  
4 they being allocated or are you seeking to recover them on  
5 the same basis you are seeking to recover remediation costs  
6 in the contact voltage proceeding?

7 Thank you.

8 MR. KAISER: Thank you. Any further questions?

9 Mr. Rodger, where are we on Deloittes?

10 MR. RODGER: As of the end of the break, there was no  
11 further response back from their counsel.

12 I can certainly give her a call during the lunch hour  
13 and see what the status is.

14 MR. KAISER: All right.

15 [Board Panel confers]

16 MR. RODGER: I just have a few questions of redirect,  
17 if I could, sir?

18 MR. KAISER: Yes. Please go ahead.

19 **RE-EXAMINATION BY MR. RODGER:**

20 MR. RODGER: Mr. Couillard, you had an exchange with a  
21 couple of my friends on the main agreement, the January  
22 1st, 2006 agreement. I wonder if you could turn that up.  
23 That was section F, tab 19, schedule 4, appendix E.

24 section F, tab 19, schedule 4, appendix E.

25 MR. COUILLARD: Yes, sir.

26 MR. RODGER: This is the agreement dated January 1st,  
27 2006 between the City of Toronto and Toronto Hydro  
28 Streetlighting Inc.

1           Now, first of all, Toronto Hydro Streetlighting Inc.,  
2   does that still exist?

3           MR. COUILLARD:  No.

4           MR. RODGER:  So what happened to that company?

5           MR. COUILLARD:  Well, this company no longer exists,  
6   so we assigned the agreement to Toronto Hydro Energy  
7   Services and transferred the asset subsequent to the  
8   initial agreement in 2006.

9           MR. RODGER:  And was the City of Toronto's consent  
10   obtained to assign this agreement?

11          MR. COUILLARD:  No, Mr. Rodger, it was not required.

12          MR. RODGER:  Did the city ask for its concept?

13          MR. COUILLARD:  No, they did not.

14          MR. RODGER:  Okay.  Now, Mr. LaPianta, you had a  
15   discussion with Mr. Quesnelle on the first day of the  
16   hearing around leveraging the streetlighting system  
17   assets.  Do you remember that discussion?

18          MR. LaPIANTA:  Yes.

19          MR. RODGER:  And there was a question that  
20   Mr. Quesnelle put to you about leveraging the luminaire  
21   itself and whether that was possible, and your answer was:  
22   Generally, no.  However you thought there might be  
23   technologies under the Green Energy Act which may be  
24   deployable to the luminaire head.

25          Do you remember that exchange?

26          MR. LaPIANTA:  Yes, I do.

27          MR. RODGER:  Would you agree with me, Mr. LaPianta,  
28   that given the Green Energy Act requirements, and now this

1 Board's directives about implementing smart grid for  
2 Ontario, that it might be possible that new technologies  
3 could be developed that create devices that increase or  
4 enhance lumen efficiency of streetlighting? Is that  
5 possible?

6 MR. LaPIANTA: Sure, yes.

7 MR. RODGER: And would you also agree with me that new  
8 streetlighting technologies may emerge to perhaps better  
9 identify fault locates, or be applied to self-healing  
10 technologies with respect to streetlighting? Is that  
11 possible?

12 MR. LaPIANTA: Yes. In fact, some of those exist  
13 already.

14 MR. RODGER: Now, Board counsel this morning took you  
15 through her package, Exhibit K2.1, on certain ESA code  
16 requirements, and I am just wondering if I could turn you  
17 to -- it's the response that Toronto Hydro gave to the  
18 OEB's questions on the ESA, Exhibit K1.2.

19 This is the package that includes the diagrams that  
20 we've gone through over the past few days.

21 If you would turn to Exhibit I, this is excerpts from  
22 the Electricity Safety Code. And the second page of  
23 Exhibit I, this wasn't included in Board Staff's package.  
24 This is section 2, general rules.

25 But you were asked questions about whether  
26 streetlighting standards applied under the Regulation. Do  
27 you remember that discussion?

28 MR. LaPIANTA: Yes.

1 MR. RODGER: And if you turn to the page I am  
2 referring you to, entitled "section 2 - General Rules", you  
3 will see at the very top section 2-000, "Scope". It says:

4 "This Code does not apply to electrical equipment  
5 and electrical installations used exclusively in  
6 the generation, transmission or distribution of  
7 electrical power or energy intended for sale or  
8 distribution to the public where:

9 "1. The distributor is licensed to own or  
10 operate the distribution system under part V of  
11 the Ontario Energy Board Act, 1998."

12 So --

13 MR. SARDANA: Sorry, Mr. Rodger, we are having a bit  
14 of trouble finding that exhibit, so if you will bear with  
15 us? Could you please repeat the reference number?

16 [Mr. Rodger passes document to witness panel]

17 MR. RODGER: So all of this part of the Code really  
18 says if you're a distributor, the Code doesn't apply to  
19 you?

20 MR. LaPIANTA: That's correct.

21 MR. RODGER: And my follow-up from my friend's  
22 question is it shouldn't be surprising, then, that  
23 Regulation 22/01 doesn't deal with streetlighting, because  
24 under the Regs there would be no streetlighting. It is all  
25 distribution.

26 MR. LaPIANTA: I accept that.

27 MR. RODGER: Okay. And, finally, you also had an  
28 exchange with Board counsel about the ESA, and there was

1 nowhere they were involved in this proceeding or not  
2 involved in this proceeding. They didn't intervene.

3 But let me ask you directly: Have any of you on the  
4 panel any direct knowledge that the ESA has any concerns or  
5 is otherwise opposed to this application of the relief  
6 sought by Toronto Hydro?

7 MR. LaPIANTA: My understanding is that they're  
8 supportive. Not that I am aware of.

9 MR. RODGER: Thank you. Those are my questions, sir.

10 MR. KAISER: Thank you.

11 **QUESTIONS FROM THE BOARD:**

12 MR. KAISER: Mr. Sardana, or if not you, whoever, the  
13 Deloitte study, I take it you have it?

14 MR. COUILLARD: We do.

15 MR. KAISER: And what we're missing is Deloitte's  
16 permission to produce it to the Board?

17 MR. COUILLARD: That is correct, Mr. Chair.

18 MR. KAISER: And you are familiar with it, I assume?

19 MR. COUILLARD: Yes.

20 MR. KAISER: And the 60 million, the original  
21 valuation, was that calculated simply by taking the  
22 forecasted stream of revenue and doing a discount analysis?

23 MR. COUILLARD: Yes, sir.

24 MR. KAISER: No other basis for calculating that  
25 number in that study?

26 MR. COUILLARD: No. They -- they looked at -- to make  
27 sure the assets were actually real assets. So they did  
28 some work on driving around and looking at some samples,

1 and making sure the assets were there, also looking as well  
2 at condition of assets, because they needed to assess, you  
3 know, how quick these assets would need to be replaced.

4 But ultimately, it is a DCF, a discounted cash flow  
5 type of calculation, based on the 30-year agreement that we  
6 have with the city.

7 MR. KAISER: Now, at that time - I should know this -  
8 but are we talking about all of the utilities that  
9 ultimately became Toronto Hydro?

10 MR. COUILLARD: Yes.

11 MR. KAISER: And would it be the case that none of  
12 those had actual net book values for these assets?

13 MR. COUILLARD: We didn't find any. We actually had  
14 several discussions with the city, and it was mainly  
15 related to tax issues that this transaction could -- could  
16 create, because as part of the transaction we wanted to  
17 make sure we could take CCA on the \$60 million worth of  
18 assets. And so we have entered into discussion with the  
19 Ministry of Finance to make sure that they would support,  
20 so we actually -- we saw the ruling.

21 For them to agree that \$60 million was a value that  
22 they would accept for tax purposes, and then we got that  
23 ruling from the Ministry of Finance, if my recollection is  
24 exact.

25 And we have been taking CCA since then, with no  
26 issues.

27 MR. KAISER: No, I understand all that. But when the  
28 valuation was done -- well, I guess let me back up.

1           The decision to use the discounted cash flow, if I can  
2   use that term, was that because there were no other  
3   physical records that you could rely on? Or was that  
4   because you thought that was the best way to do it?

5           MR. COUILLARD: Well, from a pure economic point of  
6   view, because we looked at it as a business deal, it is the  
7   best way to look at it, because we are trying to make a  
8   decision. So when we assess the purchase price, and  
9   actually the annual revenue in the contract with the city,  
10   you know, we've looked at what would be the cash flow, what  
11   the impact of cash flow generated.

12          So from an economical point of view, that was the best  
13   way. We didn't feel that looking at -- I mean there was no  
14   record. I will be honest with you. We didn't really have  
15   any records. We knew approximately how many lights there  
16   were, how many poles. But it is a small portion of the  
17   entire asset, and trying to value the poles, there is, you  
18   know, there is different types of poles and the aging of  
19   the poles. Even if we would have gotten to any type of  
20   potential reconstruction of either replacement value and  
21   used depreciation on that, the value of the business to us  
22   was really driven by the amount of cash flow that would be  
23   generated in the future from the service agreement, in  
24   comparison to the costs of the assets.

25          MR. KAISER: And we are not disputing that. That's --  
26   when you are valuing a transaction or purchase price for  
27   the purpose of a sale or a purchase -- that is often done.  
28   We often see cases where utilities transfer assets one to



1 the other, and they may include net book value, plus a  
2 share of future revenue. There are cases where this Board  
3 has approved the transaction on that basis.

4 But the amount that goes into rate base is the net  
5 book value, not the bump-up for share of future revenue.

6 So we are here looking at a situation, as I understand  
7 it, where you want a certain amount to go into rate base

8 MR. COUILLARD: Yes, sir.

9 MR. KAISER: And we don't have a net book value  
10 figure.

11 MR. COUILLARD: Well, we don't for -- when the assets  
12 were transferred, there were no records in -- in the City  
13 of Toronto records that would have given us an estimate of  
14 what was their purchase price less amortization and  
15 replacement over time. We didn't have that, and so --

16 MR. KAISER: Well, I understand. You didn't have it.

17 So my next question is: If the Board -- and I don't  
18 know what the Board will do, of course -- but if the Board  
19 came to the conclusion that: No, we are going to follow  
20 our principle; what goes in rate base is net book value and  
21 the usual accounting terms, how complicated is it to get  
22 somebody to do that calculation?

23 MR. COUILLARD: Well, I mean it's -- I don't see how  
24 somebody, you know, could actually -- I am not an evaluator  
25 expert.

26 We had discussion before with the replacement value  
27 of, you know, what would be the value on replacement, and  
28 the numbers that we were getting at were quite higher. I

1 mean it was part of the -- our negotiation with the city.  
2 I know they had hired an appraiser company, and the  
3 valuation that was derived of the asset was quite higher.

4 However, in our perspective, you know, if you would  
5 have assigned a \$90-million value of those assets, well,  
6 the contract, the ongoing monthly annual fees should have  
7 been higher for us to justify buying those assets.

8 So, you know, I am not sure I am bringing you a lot of  
9 comfort here, but what I am trying to convey here is when  
10 appraisers have looked at that, they actually thought  
11 replacement cost less depreciation was actually higher than  
12 the 60 million that was agreed upon. The reason we use  
13 \$60 million as a value is it was directly related to the  
14 amount of money that the city was willing to pay, and that  
15 we were willing to negotiate with us on an annual basis for  
16 servicing those assets.

17 MR. KAISER: No, I understand how you got it and I  
18 understand why you did it.

19 But what I understand from your most recent answer  
20 that you did look at some point in this process of getting  
21 an estimate of net book value independent of what number  
22 popped out of a discounted cash flow, you did turn your  
23 mind to that?

24 MR. COUILLARD: The city did, because that --

25 MR. KAISER: The city did?

26 MR. COUILLARD: Yes.

27 MR. KAISER: And you decided not to do it, because it  
28 would have been a higher amount?

1           MR. COUILLARD: Yes. The city would have to pay more  
2 and then --

3           MR. KAISER: They said: We're not doing that. They  
4 already told us it is going to be north of 60 million, and  
5 we're not dealing with a price --

6           MR. COUILLARD: Exactly.

7           MR. KAISER: -- at that level?

8           MR. COUILLARD: It was not making sense for Toronto  
9 Hydro to purchase these -- those assets with the service  
10 fee, to pay more than \$60 million for the service fee that  
11 was proposed by the city.

12          MR. KAISER: So one final question, then.

13          Is it possible -- and I don't know, you are the  
14 accountants -- is it possible to get an opinion from  
15 somebody reputable, somebody independent, that said  
16 something to the effect that: We haven't done a detailed  
17 net book value analysis of these assets, but if we did it,  
18 we would use the following principles. And in our  
19 judgment, it would certainly be a higher amount than  
20 Toronto is asking to be put in rate base.

21          Is that, from an accounting perspective, a work-  
22 around, if I could use that?

23          MR. COUILLARD: Mr. Chair --

24          MR. KAISER: Now we are dealing with some analysis  
25 that said: Well, we could have done net book value; we  
26 didn't do it because it would have been higher anyway and  
27 nobody would like that. The city wouldn't like that and  
28 now the OEB wouldn't like it. Intervenors wouldn't like

1 it. But we have to get somewhere beyond the point we are  
2 now, where we don't have it.

3 MR. COUILLARD: Mm-hmm. Mr. Chair, I think it is  
4 possible to do. I think that it would be -- it would  
5 require a fair bit of time, because I think in order to do  
6 that, they would have to go and do a thorough inspection of  
7 the assets to assess, you know, what -- in what stage all  
8 of the assets are, so they can assess, you know, what the  
9 original replacement cost, less, you know, the expected  
10 depreciation that would have taken place.

11 So if a pole has been -- the costs of replacing a new  
12 pole is -- is a thousand dollars, and -- but this pole has  
13 been there for, like, 30 years, they need to assess, you  
14 know -- so the value of the pole might only be \$200, so  
15 they would need to do an overall assessment. I think it is  
16 a possible exercise; it would just require a fair bit of  
17 time.

18 MR. KAISER: All right. Well, one further question,  
19 then.

20 If the Board were to decide: Okay, we are going to  
21 approve this application - leave aside now, you know, where  
22 distribution stops and load begins - but whatever it is, X,  
23 conditional on the amount that goes into rate base, being  
24 determined by an independent auditor, independent audit of  
25 net book value. Now, at that point, you would have a  
26 positive decision, but you wouldn't know how much was in  
27 rate base, right? Would I be right that nothing would  
28 really happen until you had the analysis so that you knew

1    how much went into rate base, or would you proceed and say,  
2    Well, we can adjust this in our next rate filing when we  
3    actually know what the rate base amount is based upon the  
4    independent analysis?

5           MR. COUILLARD:  I think, Mr. Chair, you bring, I  
6    think, a very workable solution.  I think for us to -- as  
7    an organization, Toronto Hydro would go ahead and move the  
8    assets for the purchase price that we believe is the net  
9    book value, and I think in the next rate case, when we go  
10   in front of the Board to review our next distribution rate,  
11   to have to support this new rate base for rate purposes for  
12   the next external valuation would be something that we  
13   would find quite appropriate.

14          MR. SARDANA:  Mr. Chair, may I just clarify something?

15          MR. KAISER:  Yes.

16          MR. SARDANA:  If the Deloitte report is approved to be  
17   provided here, would you still require an independent  
18   valuation, or would that suffice?

19          MR. KAISER:  Well, it depends what it says.

20          MR. SARDANA:  Sure.

21          MR. KAISER:  But what I have understood to this point,  
22   from the answers you gave a few minutes ago, was even when  
23   we look at it, all it is going to do is confirm that the  
24   \$60 million was derived in the following fashion, which  
25   simply took the stream of revenues, discounted it, and  
26   Bob's your uncle.  That is the number.

27          MR. COUILLARD:  You're correct.

28          MR. KAISER:  That is not net book value as we

1 ordinarily calculate it in the regulatory world.

2 MR. COUILLARD: Yes.

3 MR. KAISER: So I guess the answer to your question  
4 is: It probably wouldn't satisfy it.

5 MR. SARDANA: Okay, thank you.

6 MR. KAISER: Thank you, gentlemen.

7 MR. QUESNELLE: I had a couple of things I wanted to  
8 ask the panel, and this is one of a series of establishing  
9 kind of a context to paraphrase all of the evidence you  
10 have given.

11 But I think it is a worthwhile exercise if we you go  
12 through some of the history on this, and I would like to  
13 kind of have a concept of the operation of the  
14 streetlighting, say, functions and the related assets  
15 through two of the regulatory events that have occurred  
16 recently. When I say "recently", I am talking about back  
17 into the '80s.

18 So, first of all, would anybody be comfortable talking  
19 about the operation of the streetlighting function, what  
20 have you, in the '80s, recognizing also the application is  
21 centred on Toronto Hydro, not necessarily the other merged  
22 and amalgamated utility?

23 So are you comfortable with that, discussing the  
24 street light operation back into the '80s? Can anybody do  
25 that?

26 Okay. From what I understand - and this goes to your  
27 affidavit, Mr. Couillard - it was in 1985 that Ontario  
28 Hydro, the previous regulator, issued under the Municipal

1 Service Guide basically a policy change, and that is when  
2 they first signalled they would like to have the  
3 streetlighting assets removed from the books of the public  
4 utility commissions, the municipal-owned utilities at that  
5 time. Is that your understanding?

6 MR. COUILLARD: That's our understanding.

7 MR. QUESNELLE: I believe it was 1989 that the city  
8 actually acted on that. And is that your recollection, or  
9 I believe I've got that right, that it was 1989?

10 MR. COUILLARD: That is correct.

11 MR. QUESNELLE: Now, the actual policy change  
12 referenced in the case of streetlighting -- I am reading  
13 directly from your affidavit here. I don't think you have  
14 to turn it up. I am just going to read a short excerpt of  
15 it here:

16 "In the case of streetlighting, which is  
17 utilization equipment, municipal utilities shall  
18 be encouraged..."

19 And it goes on, "...to transfer ownership".

20 It was the key phrase here, which is "utilization  
21 equipment", that I am capturing here, that there was a --  
22 the concept being - I am asking you whether you agree or  
23 not - that because this equipment is utilization, it is not  
24 necessarily distribution equipment.

25 There is a differentiation here. It is for something  
26 else, which isn't the core business of the utilities at  
27 that time.

28 Do you agree with that?

1 MR. COUILLARD: As being the reason for the transfer?

2 MR. QUESNELLE: That there was -- that streetlighting  
3 can be characterized as something other than the core  
4 business of the distribution?

5 [Witness panel confers.]

6 MR. COUILLARD: Mr. Quesnelle, I am having a hard time  
7 getting my head around, like, agreeing with that.

8 I am trying to -- you know, what they meant by  
9 "utilization" is -- I think it could be debatable, as far  
10 as, Does that mean it was for another purpose than  
11 distribution? I am not sure they're actually -- there was  
12 actually a clear definition, and I can't obviously put  
13 myself --

14 MR. QUESNELLE: They go on to talk about the decision-  
15 making and the oversight of that function, the  
16 streetlighting, and that typically it is municipal councils  
17 that will direct that, or it's serving their purposes.  
18 Let's put it that way. So that we can discern there is  
19 something distinguishable about street lights from other  
20 core distribution services. Would you agree with that,  
21 that that was the driver?

22 You don't have to agree with the policy, but that was  
23 the driver for the policy change?

24 MR. COUILLARD: Well, I think part of the driver, I  
25 think you are absolutely right that the issue -- I think  
26 what the government was trying to do is separate the fact  
27 that on the one hand you had municipal council that  
28 sometimes, for political reason, would be pushing for



1 different type of lighting or fixture in different areas,  
2 and really -- because at the time the utilities were really  
3 a department of the city, and there was -- I think there  
4 was some -- the government might have been worried that  
5 some politicians would have tried to take advantage of some  
6 of those rules to, you know, define some different  
7 standards across the city that, you know, could -- I am  
8 obviously not accusing anybody here of that, but could have  
9 helped them in different areas.

10       So at the time, you know, as I said, the utilities  
11 were part of the city, there was no real oversight from --  
12 like the Board has today on the utilities, to dictate that,  
13 and so in the cost allocation methodology were not probably  
14 as precise as they are today, where, you know, if somebody  
15 decided to have nice lights in Rosedale, well, you end up  
16 with people in north Toronto paying for it, because, you  
17 know, it is all split across.

18       And so, you know, you might have had, like, a  
19 different type of opinion depending what ward they were  
20 dealing with.

21       So I think our view is, like, the reason for why it  
22 was done in the past, we can truly understand why the  
23 government stepped in to try to avoid that kind of  
24 practice. And now, in the current regulatory framework, we  
25 don't believe that such practice will really be possible,  
26 because, you know, now it is all under one umbrella, which  
27 is one city, and plus there is oversight. The Board would  
28 have oversight to any type of expenditures that would be

1 undertaken by the new -- by NewCo.

2 MR. QUESNELLE: You will agree with me there is a  
3 discrete service that could be identified? The precision  
4 of that identification is left to -- I think that is part  
5 of the problem we have here, but it is identifiable and  
6 discrete, and it was removed from the books of the  
7 utilities across the province?

8 MR. COUILLARD: Yes, absolutely.

9 MR. QUESNELLE: Okay.

10 Now what I am trying to capture here is, prior to that  
11 occurring, the streetlighting department, function, however  
12 that was dealt with, within -- centred on Toronto Hydro,  
13 was part and parcel and was part of the distribution asset,  
14 so -- is that the case, the delivery of that service?

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

16 MR. QUESNELLE: And operated with a certain -- and I  
17 am asking for agreement on all of these points. If I am  
18 going in the right direction, it might be just quicker if I  
19 describe what I think is probably the case.

20 There would have been people assigned with  
21 responsibility for streetlighting that had certain assets  
22 within their managerial control or responsibility?

23 MR. LaPIANTA: I can speak. Prior to amalgamation, I  
24 think the former utilities, other than the former Toronto  
25 Hydro, for the most part did not distinguish internally the  
26 resources necessary to do streetlighting.

27 There may have been some utilities that had what we  
28 used to refer to as B linemen, which perhaps would be

1 assigned to streetlighting work, but, for the most part,  
2 street light circuits were part and parcel of a  
3 distribution design process for a project.

4 They were maintained on that basis. We would go down  
5 the overhead line and maintain the street light circuit as  
6 we would the primary circuits. We didn't really  
7 differentiate between the two.

8 MR. QUESNELLE: That's the areas outside of Toronto  
9 Hydro you're talking about?

10 MR. LaPIANTA: Yes. So the former Scarborough, North  
11 York, Toronto.

12 MR. QUESNELLE: But Toronto Hydro, which I think has a  
13 lot of the difficulties you have identified in your  
14 evidence, are predicated on the experience of Toronto Hydro  
15 and the existing system within Toronto Hydro. So how would  
16 you describe the operation of the streetlighting  
17 maintenance and service function within Toronto Hydro in  
18 the '80s?

19 MR. COOK: At that time when the street light was  
20 owned by the distribution company, there was a specific  
21 department that would have addressed that portfolio.

22 MR. QUESNELLE: Okay. And had certain assets within  
23 its responsibility, and they would have been generally  
24 referred to as the street light assets?

25 MR. COOK: Yes, but not limited to that. They would  
26 also intermingle their work, if there were service wires  
27 and things to do; they were not just limited to that.

28 MR. QUESNELLE: Okay. And all I am trying to do here

1 is establish before and after the event of the policy  
2 change of Ontario Hydro, as to were there changes. Did  
3 that drive any changes?

4 So we have described what's happened in Toronto Hydro  
5 prior to that policy change of Ontario Hydro, with the  
6 assets either on the books of the utility or not, and  
7 therefore becoming the city's function.

8 So after 1989, from a functional delivery of the  
9 service and the functionality and the asset management  
10 related to streetlights, did anything change in the Toronto  
11 Hydro jurisdiction?

12 MR. COOK: Mm-hmm. There was an invoicing, obviously,  
13 that was introduced once the city owned the assets, and  
14 direction to work on different parts of that asset from the  
15 city.

16 MR. QUESNELLE: Okay, but there was, still remained a  
17 streetlight department, with functional responsibilities  
18 for those assets that were traditionally and by legacy  
19 referred to as streetlighting assets?

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

21 MR. QUESNELLE: Okay. So the next event, from a  
22 regulatory regime, would be a major one, the one in 2000,  
23 the commercialization of the sector and the segregating out  
24 any commercial activities, any non-core distribution  
25 activities.

26 So -- and I understand from the evidence and recognize  
27 that in response to legislation, there were separate  
28 entities established within the corporation of Toronto

1 Hydro that dealt with the streetlighting from that day on,  
2 and it was streetlighting code to begin with, and now THESI  
3 has that responsibility.

4 What changed from a delivery of the service? And  
5 could you describe that pre- and post of 2000  
6 commercialization, as far as a functional delivery of the  
7 streetlighting, maintenance and service?

8 [Witness panel confers.]

9 MR. COOK: It primarily would be moving away from  
10 contractor, which was providing services to the city under  
11 their direction, to asset owner, and delivering that work  
12 and conducting that work as an owner of the asset.

13 MR. QUESNELLE: Who is the owner? I am not talking  
14 about the sale of the streetlights; I'm talking about the  
15 commercialization of the sector in 2000. Not 2005. I am  
16 talking about the -- what happened in 2000 when the  
17 creation of companies to deliver, other than core  
18 distribution services -- where did the streetlight  
19 department go in 2000, I suppose?

20 MR. LaPIANTA: Again, we have to break up the  
21 response. I know for the former municipal utilities  
22 outside of the proper Toronto Hydro, it remained  
23 essentially the same. The utility conducted streetlight  
24 services, rendered services to the City of Toronto for the  
25 streetlighting, and accordingly, we recovered costs.

26 MR. QUESNELLE: Okay. But from a -- in Toronto Hydro,  
27 then, what --

28 MR. COOK: That's the same, sir.

1           MR. QUESNELLE: Toronto Hydro, THESL was the  
2 streetlight maintenance company, then, that delivered the  
3 service?

4           MR. COOK: That's correct.

5           MR. QUESNELLE: So when did the streetlighting company  
6 or THESL -- or, sorry, THESI come into being as the service  
7 delivery agent?

8           MR. COUILLARD: Well, the streetlighting company was -  
9 subject to check - was put together in 2002 or 2003. So  
10 what was done at the time is employees that were in the  
11 utility moved into that company. And as the company was  
12 providing maintenance services in the City of Toronto,  
13 for -- under contract with the city, but was not performing  
14 capital work. So it was maintenance services only.

15          MR. QUESNELLE: Well, that's the date that I was  
16 looking for, then. It's 2002 is when it occurred in  
17 Toronto that -- I was wondering when did the employees end  
18 up somewhere else, other than THESL.

19          MR. COOK: That was 2002, sir, when THSLI was created.

20          MR. QUESNELLE: Okay. So that's where the employees  
21 that were delivering the service changed. What happened or  
22 was there any change to the manner in which the assets were  
23 utilized?

24          And by that -- and we don't need to pull them up, but  
25 there were a lot of different scenarios as to how assets  
26 are being utilized, whether or not they are strictly  
27 streetlighting assets, or whether or not they are --  
28 functionality-wise, deliver other services, that being of

1 distribution, by having unmetered scattered loads also  
2 attached.

3 Was there a change in utilization of assets that  
4 occurred in 2002? Or even in 2000, back to the date when  
5 the distribution set-up was established?

6 MR. COOK: Yes. There was no change, sir.

7 MR. QUESNELLE: So if I can characterize this, then,  
8 we have a scenario where we have had two events.

9 We had a policy change from Ontario Hydro in 1985,  
10 which led to the accounting change and the asset base  
11 change of the assets off the books in 2000 -- in 1989.

12 We had commercialization of the sector, which  
13 ultimately led to employees being moved into a streetlight  
14 maintenance company, because it wasn't a core distribution  
15 system.

16 And we are here in 2009, when this application -- we  
17 really haven't had any change from, in Toronto Hydro, we  
18 haven't had any change in the utilization of those assets  
19 that were described as streetlighting assets back in 1989.  
20 Prior to that date, right to today, those assets have been  
21 utilized in the same fashion as they always have been,  
22 right back to when they were literally and ownership-wise,  
23 distribution-owned assets.

24 MR. COUILLARD: I think that is a fair comment.

25 MR. QUESNELLE: Thank you.

26 MR. LaPIANTA: Just to add on to what Mr. Couillard  
27 just said, in general, yes, nothing has really changed  
28 other than the -- the exponential growth of unmetered

1 scattered load connected to these assets. It has  
2 proliferated, really since about 2000.

3 There is much more street furniture, many more of  
4 these billboards. A lot of people are trying to connect to  
5 that particular portion of the system.

6 MR. QUESNELLE: Now, that leads to something I would  
7 like to get a handle on as well, and it is -- Mr. LaPianta,  
8 you mentioned there is a definite difference between what  
9 has happened in Toronto Hydro and historically with the  
10 streetlight department and what have you, and what may have  
11 happened in the, say, the more suburban prior  
12 municipalities of North York, Scarborough and what have  
13 you.

14 Do you get a sense, or maybe you have actual knowledge  
15 of, when the assets that were considered streetlighting  
16 assets were transferred for accounting purposes to the  
17 municipalities, the former municipalities of North York and  
18 Etobicoke and what have you, that they had more of a  
19 definite streetlighting functionality, as opposed to  
20 distribution? Was there a change -- was there a different  
21 manner in which they -- things were designed and built in  
22 the first place that would have had less reliance on  
23 dedicated streetlight assets?

24 MR. LaPIANTA: To the best of my knowledge -- and I am  
25 speaking predominantly for the former Scarborough PUC --  
26 no, the streetlight system was continued to be constructed  
27 and designed as we historically always did. I was there  
28 until about 1992 before I went to another department.



1           What the city was actively involved in was setting the  
2   lighting levels and being involved in the decorative  
3   streetlighting, the placement of decorative  
4   streetlighting. But for the most part, the exercise was  
5   one of -- of cost recovery, and substantiating our costs  
6   and maintaining and building the streetlight system.

7           MR. QUESNELLE: Okay. That is helpful, because I just  
8   wanted to establish the ongoing functionality of these  
9   systems as we have referred to today -- even though we have  
10   had two changes in the environmental policy in which they  
11   operated, both from Toronto Hydro policy change and the  
12   commercialization of the sector -- we still have the same  
13   functionality and use of these assets, irrespective of  
14   ownership in -- especially in the Toronto Hydro.

15          MR. LaPIANTA: That's fair.

16          MR. QUESNELLE: So we have THESI-owned assets, which  
17   are being used as distribution assets, and there was no  
18   change there. So when Toronto Hydro, the new Toronto  
19   Hydro, the commercial LDC of Toronto Hydro, THESL, is  
20   responding to its need to connect new customers and its  
21   obligation to do so -- if a customer lies along a line, it  
22   has an obligation to connect -- it considered the historic  
23   assets of streetlighting, which it no longer owned, to be a  
24   viable connection point to address that objective. It  
25   continued to look at streetlighting assets that are no  
26   longer owned, that were operated for a discrete purpose, as  
27   its opportunity, or it has operated as its connection  
28   point? In meeting its obligation to connect someone that

1 lies along, it included the streetlight assets as that lies  
2 along distribution system?

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

4 MR. QUESNELLE: Okay. Thank you very much.

5 MS. CHAPLIN: Thank you. I just have a couple of  
6 items to follow up. One, if I could just take you back,  
7 this was your earlier testimony today, talking about the  
8 rate impact on the unmetered scattered load class.

9 And I think you indicated that there would be a small  
10 impact, estimated at 0.51 percent?

11 MR. SARDANA: That's correct.

12 MS. CHAPLIN: Excuse me. Would that arise because  
13 effectively now, as -- actually, as Mr. Quesnelle has  
14 characterized and you have agreed -- you are using the  
15 THESI assets as distribution assets, but essentially  
16 they're not in rate base. Those costs have not been  
17 allocated to the unmetered scattered load?

18 MR. SARDANA: That's correct. That's right.

19 MS. CHAPLIN: Okay. So that explains that impact.

20 Then somewhat related to that, and following on from  
21 Mr. Kaiser's question, if I understand your testimony  
22 correctly, you have agreed that it would be acceptable to  
23 the applicants if the Board were to approve the  
24 transaction, but were to condition it that the ultimate  
25 rate base impact would be determined at a subsequent -- in  
26 some subsequent process, and potentially based on an  
27 independent valuation of the net book value?

28 MR. SARDANA: That's correct, yes.

1 MS. CHAPLIN: So what would be the implications if  
2 that net book value, based on that -- instead of being  
3 based on a discounted cash flow was actually based on the  
4 physical condition of the assets, if that was either higher  
5 or lower than the 62-1/2 million, or whatever the agreed  
6 transfer price is?

7 MR. COUILLARD: Well, if it is lower, I think it is  
8 pretty predictable what would happen is, I think -- you  
9 know, I am not -- I don't want to speak for the Board, but  
10 likely the Board would ask us to put the lower value. So  
11 if, for example, it was valued at 55, I would assume we  
12 would get 55 million, and then from an accounting  
13 standpoint, we would have to live with an impairment of  
14 asset or talk to our auditors about potential impairment of  
15 asset, which will end up with a write-down of asset which  
16 will be not recoverable in rates in the future.

17 If the value is higher, then, once again, I can't, you  
18 know, make comment on what the Board would decide. The  
19 Board would have to decide do they allow a higher number in  
20 rate base, or a lower number in rate base or just, you  
21 know, take the lesser of the -- you know, whatever value  
22 comes out of the valuator or value coming out of this -- or  
23 out of the transaction, which is around \$62 million.

24 MS. CHAPLIN: So would you foresee there would be any  
25 impact on the revenue stream which is currently, I think,  
26 \$17.1 million? You would not foresee there would be any  
27 impact on that?

28 MR. COUILLARD: No. That should not impact the

1 current service agreement with the city.

2 MS. CHAPLIN: So if, for example, it were found to be  
3 lower, and therefore a lower amount of costs were allocated  
4 to the streetlighting class, and if in fact that cost,  
5 instead of being a \$350,000 shortfall, was in fact a  
6 surplus, what happens then? Is there some sort of refund  
7 to the city?

8 MR. SARDANA: Well, revenue requirement would then not  
9 have a deficiency. It would be -- it would just be a lower  
10 overall revenue requirement.

11 But the city service agreement, to the extent that it  
12 remains intact, would still flow those dollars and they  
13 would still be applied as a revenue offset.

14 MS. CHAPLIN: So, in fact, let's say the allocated  
15 costs to the streetlighting costs were -- I am just going  
16 to use simple numbers here -- is \$10 million, but you are  
17 still collecting \$15 million. You are just going to get  
18 \$5 million that can then be applied in some manner to your  
19 entire revenue requirement?

20 MR. COUILLARD: It could, or it could be applied  
21 against this rate class, which would reduce the current  
22 distribution rate portion of their rates.

23 MS. CHAPLIN: Okay. So it could result in a refund?

24 MR. SARDANA: Yes.

25 MR. COUILLARD: If I might add, Ms. Chaplin, I mean, I  
26 have seen some -- during the negotiation - and it's four  
27 years ago - I was highly involved in this transaction, and  
28 I highly doubt the value that will come up from a report

1 will actually be lower than the \$60 million, based on the  
2 prior document or draft document that I had seen at the  
3 time.

4 The value that was coming out of this, from a  
5 depreciated and -- replacement cost at depreciated value  
6 was in excess of the \$60 million. But I think we would be  
7 happy to get that validated and get a full valuation of  
8 that, because at the time we didn't finalize the entire  
9 process.

10 MS. CHAPLIN: Okay. And in that scenario where, in  
11 fact, it is higher, if the Board were to accept that, then  
12 the result would be higher costs would be allocated to the  
13 streetlighting class and potentially the unmetered  
14 scattered load class, and, therefore, the rate impacts for  
15 those classes may well be higher?

16 MR. COUILLARD: Well, I think it would trigger an  
17 interesting -- it would trigger an interesting discussion,  
18 because from a pure accounting - I don't want to bore  
19 people with accounting, obviously it is my world - we  
20 wouldn't be allowed from an accounting standpoint to write  
21 up the asset, because it is an intercompany transaction.

22 So the transaction has to be done at the lesser of  
23 fair market value or net book value. So the current net  
24 book value we have in our books is \$62 million, and so we  
25 would -- you know, our accountant would certainly not let  
26 us -- let's say the value comes up at 80. They would  
27 certainly not let us put 80 on the books.

28 So I think either it would be treated as goodwill or -

1 - and I am not sure, obviously, but I think we would have  
2 difficulty from an accounting standpoint. I think the  
3 Board would have to ask themselves, Would they allow us to  
4 ask for more money for this rate class, when, in effect,  
5 we're looking at a current contract at the price of  
6 \$17 million and we're collecting the \$17 million revenue,  
7 which perfectly -- it's almost aligned with the \$60 million  
8 of asset if you put the asset in the rate base.

9 So the revenue deficiency is very small.

10 MS. CHAPLIN: Okay, thank you. Those are all of my  
11 questions.

12 MR. KAISER: May I just add one question to that?

13 Let's suppose the net book value done by the audit is  
14 higher than the amount you are using, and let's suppose it  
15 goes in rate base and you say, Well, we just have to  
16 increase the rates to this class of customer.

17 What do you do about the City of Toronto? Can they  
18 rely on their existing contract and say, You're not  
19 increasing our rates?

20 MR. COUILLARD: Well, no. Their contract does not  
21 address that. Their contract addressed their annual  
22 service fee. So if in the event that the service fee  
23 increased, there is some renegotiating clause that are  
24 there every five years. There's -- we sit down -- well,  
25 there is annual increase that are in the contract, and then  
26 if there is extraordinary events or if there is, you know,  
27 capital expenditures in excess of what is expected, there's  
28 certain limit of capital expenditures over certain number

1 of years, that would trigger a potential discussion for the  
2 contract.

3 But I don't believe that this would have an impact on  
4 the current agreement with the city.

5 MR. KAISER: Because you have given us the forecast  
6 revenues from the city and they rise slowly over time.

7 MR. COUILLARD: Yes.

8 MR. KAISER: Three years down the road, they're still  
9 \$17 million something.

10 MR. COUILLARD: Hmm-hmm.

11 MR. KAISER: They're not going up very much.  
12 Mr. Sardana talked, and there was some discussion, that,  
13 Well, we may just go to a rate-setting mode with respect to  
14 the city. And we have had this discussion, whether you can  
15 do that or you can't do that. And you have been somewhat  
16 vague, I would say, saying you would have discussions.

17 But what I take from your most recent answer is,  
18 number one, there could be consequences of a higher amount  
19 going into rate base. You could be asking for a larger  
20 revenue requirement from that class of customer. That  
21 would follow?

22 MR. SARDANA: That's possible.

23 MR. KAISER: And it seems like a subsidiary portion of  
24 that is that one class of customer that may not be affected  
25 by such an adjustment is the biggest one, the city.

26 Am I drawing the wrong conclusion?

27 MR. COUILLARD: I am not sure...

28 MR. KAISER: Put simply, I am asking the question.

1 Let's suppose, because of what we are talking about, you  
2 have a higher revenue requirement. That usually translates  
3 into higher rates.

4 MR. SARDANA: Yes.

5 MR. KAISER: But can you push those higher rates on to  
6 the city, given this contract?

7 MR. COUILLARD: Sorry, Mr. Kaiser. I think our  
8 position would be, respectfully, of what the Board would  
9 decide, is we would provide a study that would support a  
10 net book value and that we would be happy -- Toronto  
11 Hydro's position would be that if the net book value is  
12 higher, we would still be -- our position would be to still  
13 use the current transaction price as the net book value,  
14 not trying to increase the cost, because, frankly, we don't  
15 believe that this cost should be increased from a business  
16 standpoint, because I think the current contract gives us  
17 enough revenue to service those assets.

18 So I think, if I am reading into the Board correctly,  
19 this is more of a concern that the assets are not worth  
20 \$60 million or \$62 million, and, therefore, we would  
21 provide some evidence that they do.

22 I think in the event that they are above \$62 million,  
23 you know, we would still propose that \$62 million be added  
24 in the rate base.

25 MR. KAISER: All right. That helps. Thank you very  
26 much.

27 MS. CHAPLIN: Sorry. That moment's pause allowed me  
28 to have one more question.



1           Just going back to some scenarios and if, for example,  
2   the Board -- we have had some discussion about the  
3   luminaires and if they're load, and you have also described  
4   different cut-off points and the difficulties in the asset  
5   purchase arrangement, and you can't really sever the poles  
6   easily from the -- you can transfer poles, but transferring  
7   other assets is somewhat difficult.

8           What are the practical implications, for example, if  
9   the Board were to say, Yes, this stuff is all distribution,  
10   except the luminaire itself is not; it is load? There may  
11   be some efficiency arguments for why you might not want to  
12   transfer it, but it isn't distribution. What are the  
13   practical difficulties -- is it implementable? Is that  
14   type of scenario implementable? And what's involved from  
15   your end and all the different component companies, in  
16   terms of doing that?

17          MR. SARDANA: So we think it is absolutely  
18   implementable. One scenario that can be envisioned is  
19   that, you know, we have -- if you'll pardon the term --  
20   LampCo as an ancillary business off the regulated business,  
21   but separate from the regulatory construct; just as we do  
22   CDM today.

23          So CDM is not, for the most part, you know, other  
24   than our Peaksaver devices, part of the rate base. It is a  
25   separate entity outside. And we could run LampCo in a  
26   similar manner. And so, you know, have staff that are  
27   servicing the lamps and then charging a fee for that  
28   service.

1 MS. CHAPLIN: And LampCo would be part of THESL, or  
2 would LampCo be --

3 MR. SARDANA: Well, LampCo would be would be part of  
4 the THESL umbrella - pardon me for cutting you off - would  
5 be part of the THESL in this scenario, but with, you know,  
6 a dividing line, that it's -- it is not within the fence of  
7 the regulated company. It is outside of the regulated  
8 company.

9 MS. CHAPLIN: And maybe this is something your  
10 counsel can address, but is that in -- would that type of  
11 scenario be in accordance with the current restrictions in  
12 the Acts and the Codes and various things?

13 You may not be able to answer that, but that may be  
14 something that could be answered in argument.

15 MR. SARDANA: I will defer to counsel on that.

16 MS. CHAPLIN: Thank you. Those are all of my  
17 questions.

18 MR. KAISER: Mr. Rodger, did you want to argue now or  
19 do you want to argue after the lunch break?

20 MR. RODGER: If I could have the lunch break, that  
21 would be welcome.

22 MR. KAISER: All right. We will come back at 1:30,  
23 then.

24 --- Luncheon recess taken at 12:23 p.m.

25 --- Upon resuming at 1:40 p.m.

26 MR. KAISER: Please be seated.

27 Mr. Rodger.

28 **SUBMISSIONS BY MR. RODGER:**

1 MR. RODGER: Thank you, Mr. Chairman.

2 Mr. Chairman, I would like to address, in my  
3 submissions, five themes which I submit the Board should  
4 consider in determining the matters before you, and the  
5 first theme picks up on the exchange of Mr. Quesnelle  
6 before the lunch break, and that is the historical context  
7 is that streetlighting was part of Toronto Hydro  
8 distribution for most of the past century.

9 Now, the evidence shows that from the very beginning  
10 of Toronto Hydro in the early 1900s until January 1st, 1989  
11 streetlighting was an integral part of Toronto Hydro's  
12 distribution system.

13 It was designed, built and operated as a unified  
14 single system, including the handwells, poles, brackets,  
15 and luminaires.

16 It was Ontario Hydro, the former regulator of Toronto  
17 Hydro, that required that streetlighting be separated from  
18 Toronto Hydro, and then transferred to the municipality,  
19 the City of Toronto, and likewise for the other  
20 municipalities in the pre-amalgamation era.

21 Now, Mr. Quesnelle touched on the driver for this  
22 change. I think it is important, because he was the first  
23 one to raise it outside of what we filed, prefiled in  
24 evidence. And attached to the affidavit from Mr. Couillard  
25 - and the reference is tab 5, Exhibit L, I don't think you  
26 have to turn it up - is the excerpt which Mr. Quesnelle  
27 referenced dated May 1st, 1985 from Ontario Hydro's  
28 Municipal Service Guide. And Mr. Quesnelle read part of

1 that, but I want to read all of it, and it says as follows:

2 "Municipal utilities should be encouraged to  
3 transfer ownership to the municipal corporations  
4 on a prescribed basis. The rationale for this  
5 approach is that decisions on new lighting and  
6 replacements, including types of supports and  
7 fixtures, rest with council."

8 And that is C-O-U-N-C-I-L.

9 "Also by minimizing expenditures on  
10 streetlighting, the municipal utility can apply  
11 more of its capital resources to extensions and  
12 improvements to the distribution system."

13 End of the quote.

14 Now, of course, this was an Ontario Hydro province-  
15 wide policy, not just the City of Toronto, but I suggest to  
16 you that the rationale behind this policy change was  
17 Ontario Hydro was concerned - and this was referenced by  
18 Mr. Couillard - that municipalities were mandating that  
19 their utilities spent more money than they should for  
20 streetlighting equipment; that is, install more expensive  
21 decorative light standards, et cetera, when perhaps plainer  
22 or more cheaper products would do.

23 This seems to be the basis for the change.

24 So in today's car jargon, utilities would be directed  
25 to buy a Porsche when a Prius would do just fine, but all  
26 of this happened in a completely different regulatory  
27 context than we have today.

28 Now if a municipality requires more expensive

1 streetlighting standards or equipment that exist for  
2 planning or city, town beautification purposes, under  
3 today's rate-making principles the municipality or the USL  
4 customer, as the case may be, would pay for it, not the  
5 other ratepayers.

6       So I suggest to you, Mr. Chairman, that the concern of  
7 the former Ontario Hydro that precious resources not be  
8 allocated away from other distribution investments because  
9 of municipal demands regarding streetlighting requirements  
10 simply does not exist anymore.

11       So the finding that I would ask the Board to make in  
12 this regard is that the historical concern, which resulted  
13 in distributors being directed to transfer streetlighting  
14 to their host municipalities, is no longer present and are  
15 alleviated by this Board's oversight and role in regulating  
16 distributors in a manner consistent with the public  
17 interest.

18       Now, the second theme is that the status quo situation  
19 is dysfunctional and requires a remedy in the form of the  
20 relief sought.

21       Now, on the first day of the hearing, the witnesses  
22 took the panel and intervenors through a series of coloured  
23 diagrams, which has been referenced often in this hearing,  
24 and they were filed as part of Exhibit K1.2.

25       The diagrams and the ensuing discussion illustrate the  
26 various practical problems that exist with the existing  
27 situation. I suggest that the only conclusion that should  
28 be drawn by the Board from the evidence is that the status

1    quo is rife with uncertainty and ambiguities that result in  
2    inefficiencies, duplication of effort, and competing and  
3    sometimes inconsistent ESA regulatory oversight.

4           Now, in response to the Board's October 21st letter  
5    requesting further information on the regulatory oversight  
6    role of the Electrical Safety Authority, Toronto Hydro  
7    explained how two distinct Electrical Safety Authority  
8    regulatory regimes apply to what is essentially a unified  
9    asset base that has no clear ownership demarcation point.

10           The witness panel also took you through a series of  
11    diagrams designed to help illustrate the difficulties faced  
12    in real-life situations of this bifurcated ownership and  
13    regulatory framework.

14           The witnesses explained how their crews and ESA  
15    inspectors must make pragmatic and practical assumptions  
16    about ever-shifting points of supply to help determine  
17    where one regulatory regime notionally ends and another  
18    begins.

19           Mr. Cook testified that on a functional basis  
20    streetlighting infrastructure, handwell circuits, poles, et  
21    cetera, transition effectively into distribution lines  
22    depending on what equipment is connected and where that  
23    equipment is connected. And that was also noted at  
24    transcript volume 1, page 14 and page 16.

25           It is this lack of a clear demarcation point, it  
26    shouldn't be a surprise to anybody, given that the  
27    streetlighting system was engineered and designed and built  
28    as part of one distribution system.

1       As Mr. Cook testified, streetlighting was exempt from  
2 the Electricity Safety Code when it was part of Toronto  
3 Hydro right up to the point in 1989 when it was transferred  
4 to the city. That is on page 11 of day 1 of the  
5 transcript.

6       The witness also discussed various safety issues  
7 raised by the status quo, particularly in relation to  
8 coordination of work between THESL and THESI.

9       For example, there is a potential that a temporary  
10 overhead line installed by THESI to address a break in the  
11 underground feed may get lost in the shuffle when the feeds  
12 use changes from streetlighting to distribution.

13       THESL crews may later, unbeknownst to them, complete  
14 future upgrade work that would effectively re-energize  
15 abandoned underground feeds, creating two feed points to  
16 the same street light circuit, underground and overhead,  
17 creating an unsafe condition for employees and the public.  
18 And this comes from the affidavit of Mr. LaPianta at  
19 paragraph 17 to 21.

20       Regulatory limitations and other uncertainty on the  
21 sharing of information, such as work plans, coordination of  
22 work, distribution records and embedded load connection  
23 points, serve to further enhance these safety challenges.

24       So the end result, Mr. Chairman, is that the  
25 streetlighting system in Toronto functions in a manner that  
26 is actually inconsistent and contrary to the Board's  
27 guiding objectives contained in section 1 of the OEB Act,  
28 and I want to return to this conclusion a little later on.

1           The third theme is that there are clear benefits from  
2 reintegrating streetlighting back into the local  
3 distribution company.

4           First, there is the elimination of ambiguities and  
5 uncertainties I just described. The end result will be one  
6 system with one set of rules regarding ESA regulatory  
7 oversight, not two different sets of rules and  
8 requirements.

9           Post merger, the LDC in its entirety would be subject  
10 to ESA Regulation pursuant to Ontario Regulation 22/01, and  
11 Mr. Couillard testified to this at page 25 of the day 1 of  
12 the transcript.

13          Mr. LaPianta also described engineering inefficiencies  
14 where existing LDC connectors that may be perfectly  
15 acceptable as they are, but which require changes, such as  
16 the gel cap connectors, where an ESA inspector deems that  
17 LDC system to be street lighting. And this situation will  
18 be eliminated if relief is granted.

19          As the Board will be aware from the last Toronto Hydro  
20 rate case - and reference is made to the 2010 EDR program -  
21 Toronto Hydro has enough on its plate, and significant  
22 capital and operating programs, without having to incur  
23 added expense to replace infrastructure which may not need  
24 replacing.

25          Now, the evidence is also that streetlighting  
26 reintegrated back into the LDC will enhance efficiencies.

27          The proposed transaction will enhance efficiency of  
28 utility operations by allowing a single integrated



1 workforce to respond to the needs of the unified  
2 distribution system, rather than duplicating service  
3 arrangements, as is the status quo.

4 It will allow for the consolidation of staff, and  
5 allow for the centralization of certain operational  
6 activities, such as call centre, procurement, underground  
7 locates, shared services, facilities, contractor costs and  
8 administration. And Mr. Couillard spoke to this on page 24  
9 of the transcript, and it is also at tab B, page 10 of the  
10 section 86 application.

11 Further, the proposed transaction will address  
12 complications, inefficiencies and possibly even hazards,  
13 which can result when temporary repairs are made to one  
14 part of the secondary system without complete knowledge of  
15 how those modifications affect other parts of the system.

16 Specifically, by allowing the proposed transaction,  
17 the Board will resolve a host of inefficiencies, as  
18 detailed in the application materials in THESL's response  
19 to Board Staff Interrogatory No. 2.

20 These efficiency gains will also allow THESI, THESL  
21 to dedicate adequate resources to improve overall systemic  
22 adequacy, reliability and the quality of service concerns.  
23 The evidence is also that response times are expected to  
24 improve as a result of the consolidation, addressing issues  
25 where THESL emergency response crews respond to trouble  
26 calls, only to find that the problem is on the so-called  
27 streetlighting system and vice versa, when THESI crews  
28 respond to calls only to find that the problem is on the

1 distribution system.

2 Now, there is also evidence before you, sir, that to  
3 reintegrate streetlighting back into the LDC will enhance  
4 public safety. Mr. Cook gave an example of, under the  
5 status quo, where a streetlight and traffic light are out,  
6 his crew would look at the streetlighting issue, but not  
7 necessarily fix this traffic light issue. His crew would  
8 call THESL, and a second crew would be dispatched. And  
9 that is on transcript page 19 of day 1. This situation  
10 would not occur if everything was in -- within the LDC; one  
11 crew would always be able to remedy the problems.

12 There would also be benefits in terms of security of  
13 the system. Mr. LaPianta testified that control over  
14 access to handwells is "not where it should be." That was  
15 transcript page 70 of day 1. And a single approach to  
16 prevent unauthorized access, including specialized locking  
17 devices, would remedy the situation and help reduce, among  
18 other things, safety and theft of power situations.

19 As Mr. Couillard testified, because THESI and THESL  
20 are managed by two different companies, it is not always  
21 easy to understand what other -- what each other's crews  
22 are doing. And this, among other things, would help to  
23 improve safety.

24 So all of these benefits and improvements,  
25 Mr. Chairman, were captured by what the witnesses spoke of,  
26 of leveraging the streetlighting asset. And those are all  
27 worthy of your consideration in determining the matters  
28 before you.

1           Now, the fourth theme is that streetlighting clearly  
2 comes within the legal definition of "distribute" and  
3 "distribution system" under the OEB Act, 1998. And I put  
4 together a package just for ease of reference that you  
5 should have copies of. It is a few pages from the OEB Act,  
6 and it is also a decision that I would like to refer to. I  
7 don't know whether you want to mark this as an exhibit,  
8 sir.

9           MR. KAISER: We will mark it.

10          MS. COCHRANE: I believe that we are at Exhibit K2.3.

11          MR. KAISER: Thank you.

12          **EXHIBIT NO. K2.3: EXCERPT FROM OEB ACT, 1998, AND**  
13          **DECISION.**

14          MR. RODGER: And if you go over to page 2 -- sorry,  
15 page 3 of this package, you will see the definition under  
16 the OEB Act of "distribute" and "distribute" with respect  
17 to electricity means:

18                 "To convey electricity at voltages of 50  
19                 kilovolts or less."

20          And I suggest to you that this is a broad  
21 definition. There are no limitations, other than the  
22 requirement that electricity be conveyed at 50 kilovolts or  
23 less. And the evidence before you is that the  
24 streetlighting system conveys electricity at operating  
25 voltages of 0.120 kilovolts, which is the typical supply  
26 voltage for embedded electrical loads. And elsewhere in  
27 the evidence, it states that:

28                 "In limited applications or areas of higher

1 secondary voltage, the streetlighting system  
2 conveys electricity at 0.347 kilo volts and 0.600  
3 kilovolts."

4 And that is in the Distribution Licence Application,  
5 tab 2, page 7.

6 But in all cases, Mr. Chairman, in the streetlighting  
7 system, electricity is being conveyed at 50 kV or less.

8 Now, if you look one definition down, there is a  
9 definition of "distribution system" and it is defined in  
10 the legislation:

11 "Distribution system means a system for  
12 distributing electricity, and includes any  
13 structures, equipment, or other things used for  
14 that purpose."

15 Again, a very broad definition, "any structures  
16 equipment or other things used for that purpose," which, in  
17 my submission, includes handwells, wires, poles, brackets,  
18 luminaires. Just as today, handwells, wires, poles and  
19 brackets currently within the LDC are considered  
20 distribution.

21 Now, the Board raised an issue, which I would put  
22 under the broad category of the bulb, the streetlight bulb,  
23 and how we deal with this issue.

24 On the first question -- does the Board have  
25 jurisdiction to deal with this issue and to put the bulb  
26 along with the other streetlighting infrastructure under  
27 the LDC -- I say yes, the Board does have jurisdiction, and  
28 the well established administrative law principle of the

1 doctrine of necessary implication applies here, and I will  
2 deal with that in a minute.

3 Also, there's options about how to deal with the bulb  
4 issue, and I think there's four options which I will take  
5 you through.

6 But just generally, our view is that the bulb should  
7 be included in distribution. The lamp is part of the  
8 streetlighting equipment that comprises the system. And  
9 some of my friends may suggest that this is a service, but  
10 we have examples before the Board where other activities  
11 that Toronto Hydro provides also does not fall in within  
12 the strict 50 kV conveyance definition.

13 And for example, Mr. Couillard gave the example of  
14 the protective line host mats and coverings, which they  
15 charge contractors and others for, for the protection of  
16 distribution lines.

17 Also, I would suggest to you, sir, that the Peaksaver  
18 devices fall into the same category. These are the  
19 devices, of course, that are attached to the air-  
20 conditioning systems that don't convey electricity; they  
21 interrupt the conveyance of electricity. But these 40,000  
22 devices installed in air-conditioning systems around  
23 Toronto, they're certainly within the rate base within the  
24 LDC.

25 And my point is, sir, that what comprises the  
26 distribution system and distribution equipment can change  
27 over time. And I suggest to you that we're going to see  
28 further changes, as smart grid becomes introduced in the

1 modern distribution system.

2 And as I will take you to later, that is, of course,  
3 one of the guiding objections that you shall be bound by in  
4 the section 1 of the Act.

5 And we are already seeing this, these changes  
6 already. Ten years ago at the time of commercialization,  
7 it was pretty clear that if you wanted to pursue  
8 generation, you had to do that in an affiliate. Today,  
9 LDCs are allowed, and in fact encouraged, to have renewable  
10 generation within the LDC. So things do change.

11 And if generation can be an accepted company  
12 activity, we submit that the bulb should be accepted as  
13 well. After all, Toronto Hydro has some 80 years of  
14 experience where the luminaire was considered part of the  
15 distribution system, and there is no evidence on the record  
16 to suggest that this was an issue historically, and there  
17 is no evidence to suggest that this will be a problem or an  
18 issue going forward.

19 I remind you of Mr. Sardana's evidence on this point,  
20 where he spoke to the theme of overall efficiency, overall  
21 practicability, and that is another reason why the bulb  
22 should go with the other streetlighting assets back to the  
23 LDC.

24 Now, on the jurisdiction question, my submission is  
25 short here. It is a well established principle of  
26 administrative law, the doctrine of necessary implication,  
27 and specifically it gives the Board an ability to make an  
28 order as a practical necessity for the Board to accomplish

1 your objectives under the Act.

2 And when you think about it, that is what you do in  
3 every distribution licence case. You say, We've made a  
4 determination and a declaration that what's involved in the  
5 application is in fact distribution, and, therefore, we're  
6 going to give you a licence to deal with that activity.

7 So this is nothing different than you did in any other  
8 distribution licence case. You go through the same  
9 analysis and you decide: Is it distribution or not? And  
10 that doctrine gives you the authority and jurisdiction to  
11 do that, sir.

12 Now, I also mentioned at the start of this section  
13 Ms. Chaplin asked, and others, about how we might deal with  
14 the bulb issue, as I call it. And it seems to me, sir,  
15 there are four scenarios that you may wish to consider  
16 here.

17 Again, our first position and our relief requested is  
18 that you include it as part of the LDC activities, that  
19 it's moved over from streetlighting, that it is LDC  
20 equipment.

21 However, and, unfortunately, I didn't put it in the  
22 package, but if you do have the OEB Act handy, section  
23 71(1), that's the broad section that essentially says that  
24 a distributor shall not, except for through one of the  
25 affiliates, carry on any business activity other than  
26 distributing electricity. And then 71(2) provides various  
27 exceptions to that.

28 So another way to approach this, beyond accepting that

1 the bulb is actually part of the equipment, is to say,  
2 Well, does it fit with any of the exceptions? And I say  
3 that it does.

4 If you look, for example, at section 71(2)(a), it  
5 gives an exception providing services related to the  
6 promotion of electricity conservation and the efficient use  
7 of electricity.

8 And you have heard from the witnesses that while it is  
9 still unfolding, there are certainly potential smart grid  
10 applications to streetlighting. Mr. Cook talked about  
11 conversions to LED lighting for street lights.  
12 Mr. LaPianta talked about wireless control devices in the  
13 luminaire head, and there will inevitably be others under  
14 smart grid.

15 Also section 71(2)(b) talks about electricity load  
16 management, and we also know there may be a possibility for  
17 demand response on the streetlighting system.

18 So I suggest that there is a menu here of exemptions,  
19 which you could also fit the bulb under, to have one  
20 consolidated transfer back into the distribution utility.

21 Now, a second option, which Mr. Sardana mentioned  
22 hypothetically, was to have what I am calling a lamp  
23 division just to deal with the bulb as a separate  
24 department, if you like, or division of THESL, but outside  
25 of the rate base.

26 So this would be a similar position of generation  
27 within the LDC pursuant to the Green Energy Act. It is  
28 within the LDC, but not part of the rate base. It is



1 another division.

2 But I suggest to you that unless you can fit this  
3 example within the exemptions I have just talked about, I  
4 think that Toronto Hydro would need a change in regulation  
5 or law to allow this, and this certainly is not our  
6 preferred outcome. We would prefer not to have a decision  
7 from you, sir, and then be dependent on the decision of  
8 someone else in the province, frankly. So we don't see  
9 this as a good outcome for us.

10 The third scenario is to establish LampCo or BulbCo as  
11 a new affiliate, but with no sharing of employees. So it  
12 is a separate affiliate; has its own staff.

13 I believe you can do this under the current  
14 legislation, and certainly there is no Affiliate  
15 Relationships Code issue here, Ms. Chaplin, but Toronto  
16 Hydro would not pursue this model. It would only have an  
17 affiliate if it could share employees, and that brings us  
18 to the fourth scenario.

19 You establish an affiliate, BulbCo, and it shares  
20 employees with the LDC. Well, is there an ARC issue?  
21 Well, maybe.

22 Under the revised ARC, 2.2.3 says:

23 "A utility shall not share with an affiliate that  
24 is an energy service provider employees that are  
25 directly involved in the collecting or have  
26 access to confidential information."

27 You look under the definition of energy service  
28 provider, and it includes streetlighting services.

1           So in this case, it would seem apparent to us that  
2   there is no confidential sharing of information by simply  
3   changing a bulb in a street light. But if we got that  
4   confirmation from the Board that that wasn't an issue, then  
5   you could do it the way I have described it. You could  
6   have an affiliate. All it would be is essentially a  
7   company that stores bulbs, and it would contract back with  
8   the LDC and those employees would do the actual work of  
9   changing the bulbs on the streetlighting system.

10          So I believe that is workable under the current  
11   Affiliate Relationships Code, and I hope that meets your  
12   question, Ms. Chaplin.

13          MR. QUESNELLE: Mr. Rodger, just on that, you  
14   mentioned contract back with the LDC?

15          MR. RODGER: Yes.

16          MR. QUESNELLE: For the service of changing bulbs?

17          MR. RODGER: Well, they would be the owner, I guess,  
18   to sell the bulbs or otherwise replace that particular part  
19   of the system. So that would be the only thing they would  
20   do, really, is just store and supply bulbs, provide bulbs,  
21   I guess, to the LDC, and they would actually go and do the  
22   installation, but they would be owned and housed, if you  
23   like, in a separate entity.

24          MR. QUESNELLE: What's the relationship with the city  
25   that needs the service?

26          MR. RODGER: Well, I guess it would be -- the  
27   contractual relationship potentially wouldn't have to  
28   change. It could be the relationship between the LDC and

1 the city, and then there is a separate services agreement  
2 between the two affiliates, the wires company, the LDC and  
3 LampCo.

4 MR. QUESNELLE: It's not clear to me how the LDC would  
5 be involved at all.

6 If, for instance -- and I just -- I am taking this is  
7 predicated on the notion there is just a bulb left out of  
8 the distribution assets.

9 MR. RODGER: Yes, that's right.

10 MR. QUESNELLE: If that is the case, and it is just a  
11 bulb left out of the asset base, then the distributor is  
12 doing its thing. It is running its distribution system  
13 right out to whatever demarcation points just short of that  
14 bulb is.

15 MR. RODGER: Yes.

16 MR. QUESNELLE: And then the customer's appliance is  
17 the bulb.

18 MR. RODGER: Hmm-hmm.

19 MR. QUESNELLE: I am just wondering how the  
20 maintenance of that asset becomes an LDC. Why is the LDC  
21 in that loop?

22 MR. RODGER: Because the LDC is the only one with  
23 employees. LampCo would be a shell company, essentially.

24 MR. QUESNELLE: Okay.

25 MR. RODGER: It would be doing all of the work.

26 MR. QUESNELLE: So that's the contractual  
27 relationship?

28 MR. RODGER: Exactly.

1           MR. QUESNELLE: It is one of supplying service. It is  
2 one for employees?

3           MR. RODGER: Exactly.

4           MR. QUESNELLE: Sorry. Understood.

5           MR. KAISER: In that case, would LampCo send a bill to  
6 the city for its aspect of the service, the bulb service,  
7 if we can call it that?

8           MR. RODGER: It certainly could.

9           Now, the fifth and final theme is that the merger,  
10 what we think are two distributors, NewCo and THESL,  
11 satisfy the OEB's no harm test, and this is the test that  
12 the Board has applied.

13           And if you could refer in the package that I gave you,  
14 starting at page 4, this was the case that I referred to on  
15 day 1. It's dated August 31st, 2005.

16           It actually involves three different applications  
17 which the Board combined, because there were similar issues  
18 before the Board, mergers and transactions involving  
19 Greater Sudbury Hydro, PowerStream and Veridian.

20           If you turn to page 8 of the package, which is page 5  
21 of the decision, it sets out the issue with respect to 86  
22 applications. The last paragraph starts:

23                   "Most parties to the proceeding stated and the  
24                   Board agrees that the factors to be considered in  
25                   approving an application to acquire shares or  
26                   amalgamate under section 86 of the Act are the  
27                   factors outlined in section 1 of the Act."

28           And then over to the next page, page 6 of the

1 decision, page 9 in the package, under the paragraph  
2 entitled "The Proper Test", second paragraph:

3 "The applicants argue that the proper test is a  
4 no harm test. If the applicant can establish  
5 that there will be no harm in terms of the  
6 factors set out in section 1 of the Act, then  
7 leave should be granted."

8 If you go to the last paragraph on page 6 of the  
9 decision, the Board states:

10 "The Board believes that the no harm test is the  
11 appropriate test. It provides greater certainty,  
12 and, most importantly, in the context of share  
13 acquisition and amalgamation applications, it is  
14 the test that best lends itself to the objectives  
15 that the Board as set out in section 1 of the  
16 Act. The Board is of the view that its mandate  
17 in these matters is to consider whether the  
18 transaction that has been placed before it will  
19 have an adverse effect relative to the status  
20 quo, in terms of the Board's statutory  
21 objectives."

22 And then finally, if you go to page 16 of the package,  
23 page 13 of the decision, the Board concludes:

24 "The Board has now ruled that the no-harm test is  
25 the relevant test for purposes of applications  
26 for leave to acquire shares or amalgamate under  
27 section 86 of the Act. The factors to be  
28 considered are those set out in section 1 of the

1 Act."

2 Now, in the same package on page 2, I have set out the  
3 objectives that the Board shall have regard to in carrying  
4 out its responsibilities under the Act. And as I said  
5 earlier, I would suggest to you, sir, that the proposed  
6 merger goes beyond simply satisfying the no-harm test. It  
7 actually remedies the existing situation, which I believe  
8 is contrary to section 1 for all of the reasons I outlined  
9 earlier: the elimination of ambiguity, increased  
10 efficiency, enhanced safety, et cetera. So that section 1  
11 objectives are advanced if the merger is approved.

12 Now, the first two objectives -- "to protect the  
13 interests of consumers with respect to prices and the  
14 adequacy, reliability and quality of electricity service" -  
15 - and number 2 -- "to promote economic efficiency and cost-  
16 effectiveness in the generation, transmission,  
17 distribution, sale and demand management of electricity,  
18 and to facilitate the maintenance of a financially viable  
19 electricity industry" -- you have heard Mr. Sardana testify  
20 on the rate impacts associated with this for USL and for  
21 streetlighting.

22 There will be marginal increases, and no material  
23 impacts for any other customer group. That was transcript  
24 day 1, page 26.

25 On the other hand, Mr. Couillard's evidence is where  
26 cost savings may result from the merger, reduce two call  
27 centres to one call centre, et cetera. Cost -- such cost  
28 savings can benefit all customers.

1           And in addition, when we look at the new section 1  
2   objection -- objective, number 4, and this resulted from  
3   the Green Energy Act -- "to facilitate the implementation  
4   of a smart grid in Ontario" -- and while admittedly, we're  
5   in the early stages of smart grid, you have heard evidence  
6   that it is possible that such new technologies could also  
7   apply to streetlighting. So there is a link, I suggest,  
8   between this new guiding objective and the application  
9   before you.

10           And perhaps it is the only way that the Board can  
11   discharge this objective with respect to streetlighting, by  
12   moving it into the LDC. Because if streetlighting is kept  
13   outside of the LDC, how, then, does the Board apply this  
14   fourth objective to streetlighting when it doesn't regulate  
15   it as a distribution entity?

16           So I suggest that this is another benefit of bringing  
17   it all in-house; then these objectives are applied the same  
18   for this type of infrastructure, as well, that being  
19   streetlighting.

20           MS. CHAPLIN: Mr. Rodger, if we also accept that  
21   perhaps smart grid has to do with equipment control inside  
22   somebody's house, that doesn't require the LDC to actually  
23   own those assets. I mean, surely it's possible to achieve  
24   an objective of implementing a smart grid without the LDC  
25   actually owning everything? Would you agree with that?

26           MR. RODGER: What I suppose the question is, if under  
27   the status quo -- and we now have an affiliate housing the  
28   streetlighting -- I am not sure how the Board in its role

1 as regulator under these objectives applies that regime to  
2 something outside a distribution or transmission entity.

3 MS. CHAPLIN: Presumably, the same way conservation  
4 and demand management programs are done now, through  
5 incentives and LDC programs, or, in fact, the competitive  
6 marketplace.

7 MR. RODGER: But those are through the LDC. The  
8 status quo has streetlighting outside the LDC.

9 MS. CHAPLIN: But the LDC -- what I am saying in  
10 conservation and demand management programs, the LDC is  
11 using its programs to influence consumers. It doesn't own  
12 the consumers' assets.

13 MR. RODGER: Yeah. So you're saying there could --  
14 could there be a streetlighting program within the LDC?

15 MS. CHAPLIN: Correct.

16 MR. RODGER: Yeah. That's possible.

17 MS. CHAPLIN: Thank you.

18 MR. RODGER: That's possible. But I am saying that  
19 from the evidence we've heard, it does appear, at least,  
20 that there will be direct technologies that could impact  
21 streetlighting. And again, our view is the most efficient  
22 way to deal with that is all within one distribution  
23 utility.

24 MS. CHAPLIN: But the technologies, I believe, that  
25 were identified had to do with the more efficient  
26 streetlighting, wouldn't whoever owned the streetlighting  
27 company or streetlighting activity want to be doing that  
28 efficiently? Wouldn't they have some incentive to do it



1 efficiently? Why does the LDC have a greater driver  
2 towards efficiency than another owner would?

3 MR. RODGER: Well, I think it is part in scale and  
4 scope capacities. Say the -- because conservation is such  
5 a core element, if I can call it, of the distribution  
6 business, I think that is where the expertise is going to  
7 be housed, frankly; not on, if you like, a shell that has  
8 been created for streetlighting, because of these reasons  
9 we have been going through at this hearing.

10 MS. CHAPLIN: Okay, thank you.

11 MR. KAISER: If I could just follow up to understand  
12 your argument, the LDCs in this new world will have certain  
13 targets for conservation?

14 MR. RODGER: Yes.

15 MR. KAISER: Those are LDC targets; they're not non-  
16 LDC targets?

17 MR. RODGER: That's correct.

18 MR. KAISER: So you would argue that some aspect of  
19 that target or approving those plans or whatever the  
20 regulatory regime is, could involve streetlighting?

21 MR. RODGER: Yes. That's right, and the --

22 MR. KAISER: Is that what you're saying?

23 MR. RODGER: That's right. And of course, the hammer,  
24 if you like, of keeping within the LDC is that if they  
25 don't meet the target, there's going to be a consequence.

26 MR. KAISER: Right.

27 MR. RODGER: And I am not sure whether the same will  
28 be said for a non-distribution affiliate, where this is

1 considered a non-distribution activity. It isn't dependent  
2 on rate base or any of those issues or principles.

3 MR. KAISER: Do we have any evidence in this record  
4 that would -- I don't doubt anyone's assertion that there  
5 may be conservation initiatives planned or underway for  
6 streetlighting -- but is there any concrete evidence that  
7 there are major conservation gains to be obtained that are  
8 being looked at by LDCs with respect to streetlighting? Or  
9 is it sort of like smart grid: It might happen in the  
10 future?

11 MR. RODGER: Well, you do have the testimony of  
12 Mr. Cook and Mr. LaPianta. And I am not sure, but I  
13 thought there was evidence about the pilot projects for  
14 streetlighting, for LED lighting, in the evidence?

15 MR. SARDANA: If I may -- and Mr. LaPianta may want to  
16 add to this -- I believe we mentioned on the record the  
17 possibility, in fact, not only the possibility, but the  
18 current applications of using mesh networks and other  
19 network relay switches right into the streetlight.

20 MR. KAISER: You did mention that, and I didn't  
21 understand what it is. Can you help us in what, how a mesh  
22 network has anything to do with conservation? It may  
23 well. I just don't understand it.

24 MR. COOK: Yes, Mr. Chair.

25 The capability that we have currently that we are  
26 looking at in a program that I am running -- which is  
27 called ALAMP, which is Adaptive Lighting Asset Management  
28 Project -- and that is connectivity modelling of

1 streetlight fixtures that allow us to lower the amount of  
2 energy that the streetlight would demand through the middle  
3 of the night, if you will. We must put light or lumens on  
4 the roadway at certain levels, which is driven by the  
5 Engineering -- Illumination Engineering Society of North  
6 America Recommended Practice 08. And that measures the  
7 amount of light we put on the road, which varies with  
8 pedestrian conflict.

9       So, if you will, at 11:00 o'clock in the evening until  
10 5:00 o'clock in the morning, we can actually reduce the  
11 amount of energy in dimming the streetlight fixtures,  
12 thereby creating that conservation that you are referring  
13 to.

14       MR. KAISER: So you could do this light by light? In  
15 other words, if there is some interconnection where there  
16 is nobody ever there on a routine basis between 1:00  
17 o'clock and 4:00 o'clock in the morning, you can with this  
18 technology dim the light there and not elsewhere?

19       MR. COOK: That's correct. We could do it in pods of  
20 lights, if you will, off of certain controllers. And there  
21 is actual tables in that recommended practice that I  
22 referred to that give us the exact amount of lumens that we  
23 would put on the roadway, which would give us that, that  
24 conservation benefit.

25       MR. KAISER: And where is that pilot taking place?

26       MR. COOK: We have one pilot around our Belfield  
27 building currently, that has digital ballasts, electronic  
28 ballasts there that have a ZigBee communication protocol,

1 which we can connect to and we can dim those lights.

2 MR. KAISER: All right. Thank you.

3 MR. MONDROW: Mr. Chairman, I'm sorry to interrupt my  
4 friend and the Board, but this was some evidence that was  
5 put in, and I just wonder if we could get some evidentiary  
6 clarification, if it is okay.

7 MR. KAISER: Certainly.

8 MR. MONDROW: Thank you very much. Mr. Cook said  
9 we're running the program. I wonder, Mr. Cook, if you  
10 could just confirm which entity is running that program?

11 MR. COOK: Yes, sir. That would be THESI.

12 MR. MONDROW: Thank you very much.

13 MR. KAISER: Any other questions on this? Mr. Blue,  
14 do you have anything?

15 MR. BLUE: No, sir.

16 MR. RODGER: So, Mr. Chairman, in conclusion, we  
17 submit to you that there is a public interest need to  
18 reunite streetlighting within the City of Toronto back into  
19 the balance of the distribution system, just like it has  
20 been over the vast majority of the past century.

21 And those are my submissions, sir.

22 MR. KAISER: Thank you.

23 Thank you, Mr. Rodger. Anything further, counsel?

24 MS. COCHRANE: No, Mr. Chair. I guess we just need to  
25 set a timetable for responding submissions from the other  
26 parties and reply submissions.

27 MR. KAISER: All right. Would one week be  
28 sufficient? That should be more than sufficient for reply

1 submissions.

2 MR. BLUE: Mr. Chairman, could I suggest that we have  
3 until next Friday?

4 MR. KAISER: All right.

5 MR. BLUE: In my case, anything I write has to go  
6 through a fairly detailed approval process.

7 MR. KAISER: All right. Then, Mr. Rodger, could you  
8 reply in three days or do you need more? I suppose you  
9 need to see it? The issues are pretty narrow here.

10 MR. RODGER: That's fine.

11 MR. KAISER: We should be able to move this along,  
12 shouldn't we?

13 MR. RODGER: That's fine, sir. So it would be the  
14 following Wednesday?

15 MR. KAISER: Yes.

16 MR. RODGER: Thank you.

17 MR. KAISER: Thank you.

18 --- Whereupon the hearing concluded at 2:22 p.m.