Ontario

ONTARIO ENERGY BOARD

FILE NO.: **EB-2009-0069**

VOLUME: **1**

DATE: **April 3, 2009**

Paul Vlahos **Presiding Member**

EB-2009-0069

THE ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O.1998, c.15, (Schedule B) of the *Energy Competition Act, 1998,* as amended;

AND IN THE MATTER OF an application by Toronto Hydro Electric System for
• updated cost of capital values for rates to be effective May 1, 2009;
• disposition of Expired Rate Rider Excess Revenues with rates to be effective May 1, 2009; and
• Disposition of amounts related to 2006 and 2007 Smart Meters with rates to be effective May 1, 2009.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Friday, April 3rd, 2009,
commencing at 9:30 a.m.

VOLUME 1

BEFORE:

PAUL VLAHOS   Presiding Member

A P P E A R A N C E S

MICHAEL MILLAR	Board Counsel
COLIN SCHUCH LORI GLUCK	Board Staff
MARK RODGER	Toronto Hydro-Electric System
ROBERT WARREN	Consumers Council of Canada
JOHN DeVELLIS	School Energy Coalition (SEC)
MICHAEL BUONAGURO	Vulnerable Energy Consumers' Coalition (VECC)
DAVID MacINTOSH	Energy Probe Research Foundation

ALSO PRESENT:

COLIN McLORG PANKAJ SARDANA DARRYL SEAL	Toronto Hydro-Electric System

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

E X H I B I T S

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

Friday, April 3rd, 2009

--- On commencing at 9:30 a.m.

MR. VLAHOS: Good morning, everyone. Good morning, everyone. Toronto Hydro-Electric System Limited and Toronto Hydro. This is an application dated March 2006, 2009 with the board for approval of a rate order that Toronto Hydro will give new rates effective May 1st, 2009. Also included with this application are two other applications both requesting approval of the accounts deferring dispositions commencing also May 1st, 2009. The first deferral account disposition request rates expired rate rider excess revenues and the second to amounts related to 2006 and 2007 smart meters.

Could I get appearances, please?

APPEARANCES:

MR. RODGER: Good morning Mr. Chair, Mark Rodger, appearing as counsel to Toronto Hydro-Electric System.

MR. WARREN: Mr. Vlahos, Robert Warren for the Consumers Council of Canada.

MR. VLAHOS: Good morning, Mr. Warren.

MR. DeVELLIS: Good morning, Mr. Chairman, John DeVellis, for the School Energy Coalition.

MR. VLAHOS: Good morning.

MR. BUONAGURO: Good morning. Michael Buonaguro, I'm counsel for VECC.

MR. VLAHOS: Good morning, Mr. Buonaguro.

MR. MILLAR: Good morning, Mr. Vlahos, Michael Millar, joined by Colin Shuch and Lori Gluck, to my left.

MR. VLAHOS: Thank you, Mr. Millar. Anyone else?

There being no response, Mr. Roger, I guess I will turn over to you. Do you have any preliminary matters, Mr. Millar, before I turn I told over to --

MR. MILLAR: I don't believe so.

MR. VLAHOS: Mr. Roger.

OPENING STATEMENT BY MR. RODGER:

MR. RODGER: Thank you, Mr. Chairman. By way of introduction and pursuant to Procedural Order No. 1, issued by the Board on March 18th, 2009, the matters before the Board today combine three separate applications made by Toronto Hydro-Electric System that the Board has determined will consider at one hearing today. The three applications are as follows. First on December 15th, 2008, Toronto Hydro-Electric System made an application seeking approval to refund revenues derived from the extension of various rate riders beyond their original expiry and to the first three months of the 2009 rate year. Toronto Hydro requested that the refunds be effected to rate riders commencing May 1st, 2009. These amounts are termed "expired rate rider excess revenues" and this application was assigned docket number EB-2008-0402.

Secondly, Toronto Hydro-Electric System made a further answer on March 2^{nd}, 2009 for disposition of the 2006 and 2007 amounts in the smart meter deferral account. This application was directed by the board in its EB-2008-0138 decision on motion and involves disposition of amounts related to 2006 costs carried over for later recovery, and amounts related to 2007 smart meter activities. The smart meter deferral account application has docket number EB-2009-0069.

Finally, Toronto Hydro-Electric System filed an application March 16th, 2009, pursuant to the Board's EB-2007-0680 decision which approved Toronto Hydro rates for 2008 and 2009.

This hearing today concerns the 2009 rate update application which, among other things, involves the mechanistic update of Toronto Hydro’s cost of capital. Collectively, the applications request both rate increases and rate decreases.

The combined impact of the updated base distribution rates and the customer credits arising from these three applications is that a typical residential customer consuming a thousand kilowatt hours per month will have a bill increase of approximately $1.11, or about 1 percent on the customer's total bill.

For your ease of reference, Mr. Chair, we produced a binder that is a compendium of all three applications and I wonder if we could have this marked as an exhibit, sir?

MR. MILLAR: As Exhibit K1.1, and I'll bring up a copy forward.

EXHIBIT K1.1: COMPENDIUM OF TORONTO HYDRO’S THREE APPLICATIONS

MR. RODGER: Thank you, Mr. Millar. Also, Mr. Chairman, in Procedural Order 1, it provided for interrogatories to be submitted to Toronto Hydro and we received and responded to 11 interrogatories from Board Staff and we received no other interrogatories from any other intervenor of record. We would like to present this morning by calling one witness panel to provide an overview of the key elements of the application and then to answer any questions that the Board or parties may have. So I wonder if that's acceptable to the Board, if the witnesses could go forward and be sworn in, please.

MR. VLAHOS: Mr. Millar, please. You can just take a seat.

TORONTO HYDRO ELECTRIC SYSTEM LTD. - PANEL 1

Colin McLorg; Sworn

Pankaj Sardana, Sworn

Darryl Seal, Affirmed

MR. VLAHOS: Thank you, Mr. Millar.

MR. RODGER: Mr. Chair, this panel comprised of Mr. Sardana, Mr. McLorg, and Mr. Seal, each of these witnesses also appeared before the board in the last rates case which has given rise to this hearing.

What I've done, their CVs appeared at Exhibit A1, tab 10, in that last rate case. What I’ve done is, again, for ease of reference, I put them into a separate filing for your ease of reference and perhaps we could also mark this compendium of CV's as an exhibit as well, Mr. Millar, please.

MR. MILLAR: K1.2.

EXHIBIT K1.2: COMPENDIUM OF WITNESS CVS

MR. RODGER: Thank you.

EXAMINATION BY MR. RODGER:

MR. RODGER: Mr. Sardana, just turn to go you, sir, you are the vice-president, treasurer of regulatory affairs at Toronto Hydro-Electric System Limited.

MR. SARDANA: Yes.

MR. RODGER: And have there been any changes to the CV that is before the Board?

MR. SARDANA: No.

MR. RODGER: Mr. McLorg, you are the manager of regulatory affairs at Toronto Hydro?

MR. McLORG: That's right.

MR. RODGER: And have there been any changes to your CV that is before the Board? MR. McLorg: No, there have not.

MR. RODGER: And finally, Mr. Seal, you are the manager of rates and treasury operations at Toronto Hydro-Electric System.

MR. SEAL: Yes.

MR. RODGER: Any have there been any changes to your CV that is before the Board?

MR. SEAL: No, there have not.

MR. RODGER: Now, witnesses, are you familiar with the evidence filed in the three applications that I've just described.

MR. McLORG: Yes.

MR. SEAL: Yes.

MR. SARDANA: Yes.

MR. RODGER: And was the evidence prepared by you or under your supervision and control.

MR. McLORG: Yes.

MR. SEAL: Yes.

MR. SARDANA: Yes.

MR. RODGER: And do you each adopt that body of evidence as your own in this proceeding today?

MR. McLORG: Yes.

MR. SEAL: Yes.

MR. SARDANA: Yes.

MR. RODGER: Mr. Seal, starting with you first, could you please provide a summary of the disposition of expired rate rider revenues that Toronto Hydro seeks from the Board today.

MR. SEAL: Certainly. These matters are arising from an application that THESL filed before the Board December 15th, 2008. THESL is seeking authorization to dispose of amounts both positive and negative derived from the continued existence of rate riders that were to have expired on April 30th, 2008, but which continued on until July 31st, 2008, when our new rates were put in place. THESL is seeking to implement the resulting adjusts by way of rate riders effective for the 2009 rate year over a 12-month period commencing May 1st, 2009. The four rate riders which were to have expired on April 30th were the 2006 lost revenue adjustment mechanism or LRAM six-month rate rider, the 2006 shared savings mechanism or SSM rate rider, the 2006 smart meter six-month rate rider, and the regulatory assets rate rider.

The extension of these four rate rates through to July 1st has resulted in a combined credit to customers of $7.7 million which represents a large credit balance to customers. The actual value of these excess revenues became available once the full billing records were in place as of November 2008 and were not known before that. The calculation of the amounts for disposition of the three six-month rate riders, that being the LRAM, the SSM and the smart meter rate riders has been based on billing records prorated for the months of May, June and July 2008. The calculation of the amounts for disposal of the regulatory assets rate rider has been based on the difference between the full board-approved amount plus carrying charges for the regulatory assets and the full amount recovered from customers over the period of that rate rider.

MR. RODGER: Mr. Seal, for the evidence we put forward in this case regarding the expired -- Mr. Seal, for the evidence that you put forward in this case regarding the expired rate rider revenues, is the financial information based upon the most current audited balances?

MR. SEAL: Yes, it is.

MR. RODGER: Thank you. Turning to next to you, Mr. McLorg, could you please provide an overview of the application with respect to the smart meter deferral account?

MR. MCLORG: Yes, I will. Good morning, Mr. Vlahos. Mr. Vlahos, the application that we submitted to clear the 2006 and 2007 smart meter deferral account balances, was itself directed by the Board, as mentioned by Mr. Rodger in his opening remarks, in the Board's decision on motion in docket number EB-2008-0138. And at a high level, the application asked the Board to consider and approve three distinct elements of revenue requirement.

The first and simplest is the revenue requirement that results from the standard application of the standard smart meter deferral account methodology to the 2007 smart meter activities of THESL. And by referring to the standard methodology, I mean to say that we used in this application the same methodology that the Board has approved in THESL's previous application to clear the bulk of the 2006 amounts. Again at a very high level, this simply involves calculating the revenue requirement that arises both from the investment and therefore the capital related costs of smart metering active in a given year, as well as the flow through OPEX and related costs. And that resulting revenue requirement is offset by the revenues that's Toronto Hydro received through the smart meter rate adder.

For clarity, I will refer to those revenues as derived from the smart meter rate adder, just to distinguish the terminology from the smart meter rate rider, which for ease of reference we refer to as being the mechanism by which the amounts are cleared.

The 2007 smart meter deferral account balance in the - to be cleared is in fact a credit balance of $1.5 million approximately, $1.461 million, and that represents the largest component of the three.

The second component and the third component arise from the fact that in the 2006 smart meter combined hearing that disposed of Toronto Hydro's 2006 amounts in the main, the Board chose to apply an average of the meter capital costs to the amount to be cleared, and that resulted in a residual amount arising from the 2006 activities that was reserved for disposition at a later time.

As a result of that conceptually, we are asking the Board simply to repeat the same process as it applied in 2006 to the residual amount. Consequently, there is resulting from that residual capital amount in 2006, a 2006 revenue requirement, which of course is composed only of the capital-related costs. And at the end of the 2006 rate year when that amount is notionally determined, it is in effect frozen and afterwards only carrying costs are applied to that amount.

As an extension of the existence of that residual amount, there is a revenue requirement associated with the rate base that would normally have been carried into 2007, were it not for the fact that the smart meter deferral account was in place. So there's a carry forward -- again, no operating cost but only of the capital costs -- from the 2006 residual amount into 2007, and that gives rise to a similar revenue requirement in 2007 resulting from the residual 2006 smart meter capital.

Now, these amounts respectively are $213,000 for the residual revenue requirement relating to the 2006 residual amount, and $505,000 in 2007 relating to the carry-forward of the 2006 residual smart meter capital.

As we've indicated, these amounts are to be netted out, and in the result, a credit amount of approximately $744,000 is sought for disposition to customers through rate riders effective for 12 months commencing May 1, 2009.

MR. RODGER: Mr. McLorg, for the evidence that you put forward this morning and also for your prefiled evidence regarding the smart meter deferral account, is the financial information based upon the 2007 audited balances?

MR. MCLORG: Yes, it is.

MR. RODGER: Thank you, Mr. McLorg.

And finally turning to you, Mr. Sardana, could you please describe the key elements of the draft rate order for 2009 that was filed with this Board on March 16th, 2009?

MR. SARDANA: Certainly. Thank you, Mr. Rodger.

Good morning, Mr. Chair. On May 15th, 2008, the OEB granted THESL a rate approval for 2008 and 2009. At page 71 of the decision, the Board stated:

> "As for 2009 rates, this decision will govern the establishment of those rates subject to the cost of capital parameter updates and possibly other decisions that might apply."

On March 16th, 2009, THESL filed a draft rate order pursuant to the Board's direction in the rates decision. In this application, THESL provides a detailed description of its changes to cost of capital. THESL has adjusted its 2009 revenue requirement and corresponding rates to reflect the updated costs of capital parameters provide in the Board's February 24th, 2009 letter.

In summary, the key cost of capital changes are as follows: THESL's long-term debt rate has been updated to reflect new affiliate debt forecast to be issued later in 2009.

The updated forecast of THESL's weighted average debt cost is 5.57, compared to the forecast of 5.5, as filed in Exhibit E1, Tab 4, schedule 2. The calculation of the 2009 long-term debt costs is shown in schedule 2A in the March 16 application materials.

As a result of the updated long-term debt rate, the change to the short-term debt costs set by the OEB and the change to the allowed 2009 ROE also recently set by the OEB, THESL's weighted average cost of capital declined from 7.0 percent, as originally filed, to 6.38 percent, as shown in schedule 2. Applying the updated weighted average cost of capital to the total rate base of 2 billion and 35 million produces a return on rate base of 129.8 million, compared to 149.3 million, as filed in THESL's original December 21st, 2007, update.

Other changes that result from the change to cost of capital, including THESL's approach to cost allocation and rate design are identified and described in the March 2006 application. Because the Board is combining all three applications described earlier into this hearing, the draft rate order that THESL filed on March 16, 2009 incorporates the bill impacts by assuming that the relief requested in each application is granted. The combined bill impacts of all these changes are shown in schedules 11 through 13 in our March 16, 2009 application.

MR. RODGER: Thank you, Mr. Sardana. Mr. Chairman, that concludes direct examination. The panel is now available for cross-examination.

MR. VLAHOS: Thank you, Mr. Rodger. Do the parties have a preference in terms of order? Mr. Warren?

MR. WARREN: I think that the -- my colleagues in the row behind me would prefer to start. They have some materials they want to put to the panel.

MR. VLAHOS: Mr. DeVellis?

MR. DeVELLIS: Thank you. Good morning, Mr. Chairman. Mr. Chairman, I handed up documents a compendium of documents that I sent out around yesterday. I wonder if those could be marked as an exhibit before I begin?

MR. MILLAR: This is if promissory note, Mr. DeVellis.

MR. DeVELLIS: Yes. Well, the compendium begins with that document.

MR. MILLAR: We’ll call it the SEC compendium and it’s Exhibit K1.3.

EXHIBIT K1.3: SEC COMPENDIUM

MR. DeVELLIS: The first two document are the promissory note which was an exhibit in the last proceeding, but I don’t believe -- it has been referred to in this proceeding, but I don't believe has been -- is part of the record and that's the reason I've included it.

MR. VLAHOS: Mr. DeVellis, I'm losing you.

CROSS-EXAMINATION BY MR. DEVELLIS:

MR. DeVELLIS: Good morning, panel. Mr. Sardana, all of my questions will be for you. Most of them will be with respect to the forecast of debt costs but one question with respect to your OM&A costs for 2009. I wonder if you can turn to Board Staff Interrogatory No. 1.

MR. SARDANA: We have that.

MR. DeVELLIS: This is a table of Board-approved various expenses for 2008 and 2009. With respect to the total OM&A expenses, you have $185.1 million for 2008 that’s Board approved, and 190.2 million for 2009; is that right?

MR. SARDANA: That's right.

MR. DeVELLIS: I'm just looking at the decision, previous decision for 2008 at page 38 and the Board says that for rate-making purposes, the amount of 180 million for controllable expenses is approved, and for 2009 the approved amount is 185 million. Can you explain where the 185, 190 comes from?

MR. SARDANA: Mr. DeVellis, we'll take an undertaking on that one.

MR. MILLAR: That’s Undertaking J1.1, and it is to provide an explanation of the -- this will be my stab at it -- the apparent discrepancy between the requirement in the decision that the 2009 OM&A budget be 185 million and the application showing 190 million for OM&A.

MR. SARDANA: Thank you, Mr. Millar. Maybe I could retract that or explain it though. If you turn to the next page where we provide an answer, lines 5 through 10 do go into an explanation of how we came up with the 190.2 million.

I wonder if that would suffice or if you would still prefer that we take an undertaking and come back to you.

MR. DeVELLIS: Are you referring to line 5 to 10?

MR. SARDANA: Five through 10, yes.

MR. DeVELLIS: I see.

MR. SARDANA: And they derive precisely how we -- from the 185 million starting point.

MR. DeVELLIS: Okay. Well, why don't I look at that and maybe if we come back after the break.

So the next area of questions is the -- with your forecast of debt cost 2009.

MR. SARDANA: Finally something easy.

MR. DeVELLIS: Well, we'll see. I guess a good place to start would be Board Staff Interrogatory No. 2, that’s tab 1, schedule 2 of the evidence. Page 1. You have two tables here.

These are, I think, tables that have just been reproduced. The top table is from your 2007 evidence for the rate proceeding; is that right?

MR. SARDANA: Yes.

MR. DeVELLIS: And the one beneath that is just strictly reproduced as schedule 2A from the current evidence; is that right?

MR. SARDANA: That's right.

MR. DeVELLIS: So in the first table you have --

this is your forecast of debt cost for 2009 as of November 12, 2007; right?

MR. SARDANA: That’s right.

MR. DeVELLIS: And the line two of that table, you have a $980 million city note with a principle outstanding of 735 million.

MR. SARDANA: Correct.

MR. DeVELLIS: So the first question is: That $980 million note that of course is the one being repaid in three instalments.

MR. SARDANA: In four instalments, that’s right. The first instalment was paid at the end of 2007.

MR. DeVELLIS: Okay. So the first one, the reason it’s $735 million outstanding is because it has been reduced by 245 million.

MR. SARDANA: That’s correct.

MR. DeVELLIS: Then on line seven, you have another $245 million. Is that also to repay the ...

MR. SARDANA: Yes, that represents the second instalment of the aforementioned four instalments, and that is due at the end of this year, at the latest at the end of this year.

MR. DeVELLIS: So the -- that 735 million would be further reduced, I guess, at the end of this year.

MR. SARDANA: That's right.

MR. DeVELLIS: So in our compendium, was it K1.3, Mr. Millar?

MR. MILLAR: Yes.

MR. DeVELLIS: We have – page 3, we have a copy of the promissory note, the $980 million note.

MR. SARDANA: Yes.

MR. DeVELLIS: Page 2 of our compendium. We see at page 3, we have the interest rate on that note, 6.16 percent.

MR. SARDANA: Correct.

MR. DeVELLIS: In your table, in the Board Staff interrogatory, you have the coupon rate further noted at 5.36 percent.

MR. SARDANA: That’s correct.

MR. DeVELLIS: Can you explain why, the difference?

MR. SEAL: I'll try this one, Mr. DeVellis. In the Board’s cost of capital guidelines which came out, they described how affiliate debt was to be priced and the pricing of that affiliate debt which is between THESL and THC, we took the Board's guidelines and derived the 5.36 percent based on those guidelines. Those guidelines state that the debt rate for affiliate debt should be the lesser of the negotiated contracted or contracted rate, or the deemed debt rate as described in the cost of capital guidelines. So the 536 actually is the deemed rate that would have occurred at the time that note was renegotiated. And that is the rate that we've used for rate-making purposes.

MR. DeVELLIS: I thought the 5.36 was a result of the previous disallowance in the 2006 cost of service application.

MR. SEAL: No, it was not. It was directly applying the cost of capital guidelines.

MR. DeVELLIS: So if we go to line 7 of the first table, you have city note replacement, and at the time, your forecast for that was 6.56 percent.

MR. SEAL: Correct.

MR. DeVELLIS: How was that forecast arrived?

MR. SARDANA: I'll turn that over to Mr. Seal again.

MR. SEAL: That forecasted rate was based on our estimate of the underlying Government of Canada's plus A corporate spread for issuing debt at that time.

MR. DeVELLIS: That was the issue date was going to be December 31st, 2009.

MR. SEAL: That was the initial date that we had planned in there.

MR. DeVELLIS: We see on page 3 of the promissory note, that's page four of our compendium, that that is in accordance with the repayment schedule set out in the promissory note.

MR. SEAL: That is the date required for the third tranche repayments.

MR. DeVELLIS: So if we go to the updated table, the table below, schedule 2A, you have issue date of October 1st, 2009, instead of December 31st.

MR. SEAL: Correct. So the updated table reflects our current estimates of timing amounts and rates for the second tranche issue.

MR. DeVELLIS: Okay. So why October 1st because the note says you have to repay by December 31st.

MR. SARDANA: We apologize for playing tag-team here, but -- so Mr. DeVellis, debt capital markets effectively shut down in December, and even though the city wants its money back on the last day of the year, you can appreciate that, you know, obviously they are going to try and collect interest on the note for as long as possible. But the practical matter is that access to capital in December is problematic at best. And now as you also know, we have two notes that are already paying coupons upon in November, and you know, we've testified to this before that it's a matter of practicality and a matter of optimization of capital structure that we try and ladder maturities out across the spectrum.

So our current thinking is that October is currently the best time for us to access the market for this note issuance, and that's why we picked October 1st.

MR. DeVELLIS: Okay, but the rate that you are paying on that 245 million is 5.36, I take it, until you change it to the new -- until you repay it and replace it with the new note, right?

MR. SARDANA: The rate that we are paying to the city, to Toronto Hydro Corporation and then Toronto Hydro Corporation to the city, is actually 6.16 percent.

MR. DeVELLIS: Okay, no, but the amount that's currently approved in rates for that –

MR. SARDANA: Yes, it's 5.36 percent.

MR. DeVELLIS: 735 million –- okay, and according to [inaudible] you don't to have pay that back until the end of December?

MR. SARDANA: That's correct.

MR. DeVELLIS: Because then you would effectively be asking the ratepayers to pay 7.25 percent for three months when you don't actually have to pay it back until the end of December?

MR. SARDANA: Yes, again tempered with the fact that I can't access the markets in December. So I have, you know, in some respects little choice but to have the debt issued and ready to repay the city.

MR. DeVELLIS: Well, I mean couldn't you negotiate in October -– or, you know, October or November and have it, have the note in place by the end of December?

MR. SARDANA: This is again, Mr. DeVellis, our best forecast of when we intend to enter the markets. Right now we are still looking at October, early October as our date.

Can that change? Sure it can, but right now that's when we think we can enter the markets.

MR. DeVELLIS: Okay.

Now let me ask you about the forecasted costs of the replacement note of 7.25 percent.

MR. SARDANA: Sure.

MR. DeVELLIS: Your evidence says that your – the forecast complies with the cost of capital guideline.

MR. SARDANA: That's correct.

MR. DeVELLIS: Okay. And what the guidelines say is that:

"The cost rate for new affiliate debt --"

Which is what this would be, okay?

"-- is the lower of the contracted rate and the deemed long-term debt rate. This deemed long-term debt rate will be calculated as the long Canada bond forecast plus an average spread, with A/BBB rate corporate bond yields."

Are you familiar with that?

MR. SARDANA: Yes.

MR. DeVELLIS: Okay, and so is the 7.25 percent, is that your forecast of the contracted rate?

MR. SARDANA: That's our forecast of the contracted rate, yes.

MR. DeVELLIS: Okay, because the way it's described in the notes under schedule 2A, the note number 3, is:

"Coupon rate reflects Conference Board of Canada forecast of long-term government bonds of 3.7 percent, plus corporate spread of 3.5 percent, plus administrative costs of 5 basis points."

Do you see that?

MR. SARDANA: Yes.

MR. DeVELLIS: Okay, so it seems like what you are doing is you're using the methodology for the deemed long-term debt rate.

MR. SARDANA: No. Where –

MR. SEAL: What we've done is -- it may seem similar to the deemed long-term debt rate, because it is similar to the deemed long-term debt rate. The deemed long-term debt rate is supposed to represent the cost to utilities of long-term debt financing. The actual cost to utilities for long-term debt financing is composed of the same components that the deemed rate is composed of, which is an underlying government long bond, plus a corporate spread.

So the methodology is similar in coming up with the numbers, the difference being that this is the number that we've used based on our forecast for when we plan to issue the amount, as opposed to the deemed rate in the cost of capital guidelines of 7.62 percent. So again, we've followed the cost of capital guidelines. It's the lesser of the two.

MR. DeVELLIS: Okay. You are familiar with the Affiliate Relationships Code, I take it?

MR. SEAL: Yes.

MR. DeVELLIS: Okay, and you know that one of the provisions of the Code -- it's Section 2.3.3.1 – says that:

> "Where a reasonably competitive market for a service product, resource or use of asset exists, the utility shall pay no more than the market price."

Are you familiar with that?

MR. SEAL: Yes.

MR. DeVELLIS: Okay, and then 2.3.3.2 says:

> "A fair and open competitive bidding process shall be used to establish the market price."

Are you familiar with that?

MR. SEAL: That's right. Yes.

MR. DeVELLIS: Okay. Would you agree with me that if you did have a contracted rate, it could be no more than the market rate -– sorry, if you did have contracted rate, it could be no more than the market rate, in order to comply with the ARC?

MR. SARDANA: Mr. DeVellis, in this instance the contracted rate would be the market rate.

MR. DeVELLIS: Okay. Well, that's what I'm going to ask you. Did you seek a quote for this in the open market?

MR. SARDANA: In -- are you referring to 7.25 percent?

MR. DeVELLIS: The 7.25 percent, yes.

MR. SARDANA: Well, again, the components, if you break this right down into its components, as Mr. Seal has mentioned, the Government of Canada – underlying Government of Canada bond rate is the Conference Board's forecast at the time. It's the spread that is quoted by the markets to us on a continuing basis. We get quotes every day on where we might be if we enter the market, and I do stress might, because you know, unlike a stock exchange where there is price transparency and you can see where trades are taking place, in a bond market it's an over-the-counter market, so until you are actually in the market and priced, you don't know the exact rate. So this is an indicative spread of where we think the market will be when we get into the market on October the 1st.

MR. DeVELLIS: Okay. I need to back up a second. I wanted to ask you earlier and I forgot: What is it that you are asking the Board to approve in this proceeding with respect to this rate? Are you expecting that when you come back that this would -- in 2010, that this rate of 7.25 percent will then be embedded affiliate debt, which would be just approved under the guidelines?

MR. SARDANA: Well, I guess just for clarification, our intention currently is to file a 3GIRM application for 2010 rates. We are intending to file a cost-of-service application for 2011 rates, and at that point, yes, it will become embedded debt.

It becomes embedded debt as soon as we issue it, obviously, but the rate will be adjusted at that point.

MR. DeVELLIS: Okay, but it would be embedded debt based on the Board's approval in this application, not on - because you haven't actually contracted -- this is a forecast of your contracted rate; correct?

MR. SARDANA: Yes, it will become the actual rate.

MR. DeVELLIS: So whatever the contracted – whatever the actual contracted rate is?

MR. SEAL: Just to clarify, so our next full cost-of-service filing, if we have issued debt in the meantime?

MR. DeVELLIS: Yes?

MR. SEAL: It will be the actual contracted debt rate that will be used for the next cost-of-service filing.

MR. DeVELLIS: Okay, and that would actually -– that would of course be subject to a prudency review.

MR. SARDANA: I suppose.

MR. DeVELLIS: Okay.

MR. SARDANA: All our evidence is subject to that review.

MR. DeVELLIS: Okay. Well, let me get back to the question I was asking before, then ––

MR. RODGER: Just to make sure -– excuse me, Mr. Chairman. I'm just not sure what Mr. DeVellis means by that. There are -– the utility that's seeking approval today for this forecasted amount for long-term debt and the witnesses say that in the next cost-of-service application in 2011, whatever the actual contracted amount will be will be before the Board, but I'm not sure what you mean by an additional prudence test.

The decision today of the Board will fix that forecast rate as we move forward, and will only be changed in the next cost-of-service rate application.

MR. DeVELLIS: That wasn't my understanding, Mr. Chair. My understanding of what Mr. Seal said was that this 7.25 percent is a forecast, and when we get to the next rate year, but -- you know, when it is actually issued, there'll be an actual contracted rate. And that contracted rate will then be before the Board in the next rate proceeding, but that contracted rate would never have been approved by the Board.

What's being approved now is a forecast of what the contracted rate will be, but the actual contracted rate is not being approved. So when we get to the next proceeding the Board will have to then treat that as new issued debt and examine whether the contracted rate is prudent or not, because there would be no review of it beforehand.

What we are doing now is not reviewing the contracted rate; this is only a forecast.

MR. VLAHOS: Mr. Rodger, while your witnesses confer, I just want to make sure there is a plan for 2011 cost-of-service application. For 2010, it is an IRM?

MR. RODGER: That's correct, Mr. Chair.

MR. VLAHOS: Right, and so the IRM method, there is no provision for updating for the actual cost of debenture.

I should ask the witness, actually. Mr. McLorg or Mr. Sardana?

MR. SARDANA: That's my understanding too, Mr. Vlahos, that under an IRM mechanism, the formula is fairly prescriptive as to what has changed and it's really a price adjustment. So the rates that are set for 2009 will be the ones adjusted for 2010.

MR. McLORG: Maybe I could lend my perspective to this, if you don't mind, Mr. Vlahos, in addressing the questions from counsel for SEC.

Certainly from my perspective, the Board has already set out a mechanism for approval of capital costs and clearly, for rate-making purposes, the Board will not include costs of debt that exceed the board guidelines.

As a matter of fact, if a utility is able to secure long term debt on an actual basis at a rate less than the maximum provided for in the Board's guidelines then that actual amount is the cost that is embedded in the revenue requirement.

So Mr. DeVellis appears to suggest that there would be an after-the-fact prudence review of the Board of a contract that THESL might enter for long-term debt financing, and that doesn't seem to make sense to me on account of the fact that if Toronto's achieved rate is lower than the guidelines, then that's already approved by the Board. If the achieved rate is higher than the guidelines, then the Board takes no notice of that and includes in revenue requirement only the maximum amount provided under the guidelines. So there's no necessity for the kind of prudence review that Mr. DeVellis is talking about.

MR. VLAHOS: I follow what you’re saying, Mr. McLorg, I’m just not sure that it’s...

MR. McLORG: Correct?

MR. VLAHOS: That it’s correct. I'm just not sure it's correct. So...

MR. MCLORG: That is certainly my understanding of the operation of the Board's cost of capital guidelines.

MR. VLAHOS: So say that the 2009 rates, say that the Board approves the forecast of 6.25, and that will continue for the next IRM year.

MR. SARDANA: Yes.

MR. VLAHOS: Now, the actual cost will be whatever will be, I guess, whether it's October or November or December.

MR. MCLORG: That's correct.

MR. VLAHOS: So that rate now would be reflected in 2011, but to the extent that that rate you are saying is higher than may be applying for 2011, then the company will be losing out, or its revenue requirement will be reduced? That’s how I read your comment. Maybe I did not fully understand.

MR. MCLORG: I don't think that I meant to address the precise wrinkle that you are referring to. The way I understand what you've just said, sir, is that the Board might at any point have in existence a maximum allowed deemed rate for newly-issued debt that a utility could contract for.

So in 2007, for example, let's just for illustrative purposes say that that rate in 2007 is 7 percent and a utility might at that time be able to issue debt for 6.8 percent, and were it able to do so then at the next time of cost-of-service hearing occurs and a revenue requirement is set expressly that 6.8 percent will be the cost that's imbedded in the revenue requirement.

So please, if I could ask for your forbearance, the fact that 6.8 is at that time established is accepted by the Board as applying to the debt that's issued under that rate. If two years hence, in 2009, due to a hypothetical collapse of the economy, that rates were to decline, it certainly has been on my understanding of the Board's historical practice to say that the debt issued historically still attracts in revenue requirement the cost at which it was issued if it conformed to the guidelines at that time, and there's no penalty exercised by the Board on utilities if at a later time rates decline.

Similarly, of course, there's no increase in the embedded debt rate allowed in revenue requirement if rates were to increase at a later time.

MR. VLAHOS: Mr. McLorg, you’re saying exactly the same thing but that's not how I understood it first time you articulated it.

You are saying "what my understanding is," except if the Board's values, parameters, say it's 7 percent for a given year, and are you saying that if we come in 6.8, then the fact that it's below 7 percent is not testable in the next opportunity, that as long as it’s below 7 percent then the board should blindly accept the 6.8, there should be no questioning whether the 6.8, you know, it is not reasonable, it could have been 6 percent. I think that's where Mr. DeVellis is coming from.

Mr. DeVellis, am I ...

MR. DeVELLIS: That's exactly what I was --

MR. VLAHOS: So there is agreement by all that that's where they’re coming from. So...

MR. WARREN: I think on that issue we are in agreement, sir, that the Board has to be able to test whether or not they got the best rate and there isn't an automatic approval if it happens to be below what the formula generates.

MR. VLAHOS: So that's the issue of the intervenors; all right. Do you understand the issue, Mr. McLorg, now?

MR. McLORG: Well I do, but...

MR. VLAHOS: You don't agree with it.

MR. McLORG: I would suggest then that the utilities are ultimately without guidance as far as their activities in the market are concerned, because if the Board issues guidelines that include a deemed maximum acceptable rate for debt, with the additional proviso that anything you are able to do below that maximum rate will be costed for revenue requirement purposes at that lower actual rate, then utilities are unable to rely on that guidance. If there's a subsequent prudence review that would, I assume, seek to second-guess the utility’s decisions based on information that might be available at a later time. I think the underlying --

MR. VLAHOS: Mr. McLorg, we don't want to get into argument right now, but I understand -- you understand what the concern is.

MR. McLORG: I do.

MR. VLAHOS: I'm sure you'll be able to answer more requests on that.

MR. DeVELLIS: Thank you. So let me get back to my -- what I was asking you about earlier, and that is: Did you seek a quote for this on the open market?

MR. SEAL: Yes, Mr. DeVellis, as I mentioned to you, and maybe I can back up and let you know that all six chartered banks are in Toronto Hydro Corporation’s syndicated bank facility. So as a matter of course, we get a tremendous amount of information on our market debt and on the markets in general from these banks. Part of that have information flow is where the indicative pricing is for Toronto Hydro bonds, and I stress indicative, because the market changes. As you know, we've been in an unprecedented period of turmoil.

So I guess it’s a long answer to your question, but the answer is yes we do get quotes from the market. They are indicative quotes. As we get closer and closer to the actual issuance date, they no longer become quotes but they become indications of where pricing will start as they open "their book" to price our deal.

MR. DeVELLIS: Okay. But you haven't provided those quotes in this proceeding.

MR. SEAL: I believe we have in the footnote. Note 3, the Government of Canada bond which is based on the Conference Board of Canada forecast at the time was 3.7 percent. The indicative quote from the market at that time is 350 basis points.

MR. DeVELLIS: That's just a Conference Board of Canada forecast, plus the corporate spread, but you haven't actually provided a quote from Toronto-Dominion Bank or CIBC saying, We'll give you, Toronto Hydro, a 30-year note for X percent.

MR. SEAL: Perhaps I'm not making myself clear. The part of the sentence on note 3 that says "plus corporate spread of 3.5 percent," that part of the quote comes from the chartered banks. That's an average consensus forecast of the chartered banks’ indication of where our debt might be for 30-year term money.

MR. DeVELLIS: Can I ask you to turn to page 9 of our compendium. This is an excerpt from Toronto Hydro Corporation’s consolidated financial statements for 2008.

MR. SARDANA: I have that.

MR. DeVELLIS: So this is note 11 to the financial statements. It has to do with Toronto Hydro Corporation’s letters of credit. So Toronto Hydro Corporation has a $500 million letter of credit for its working capital; is that right?

MR. SARDANA: No. The $500 million refers to the entire size of our syndicated short-term lines.

MR. DeVELLIS: Okay.

MR. SARDANA: That’s the bank facility. The bank's facility is then further carved into components. One of the components of the bank facility is a carve-out to enable us to issue letters of credit as required by, in this instance, of course, by the IESO market for prudential requirements. So we're allowed to issue up to 175 million in letters of credit out that have 500 million. And we have to date issued just over 45 million.

MR. DeVELLIS: And what is the interest rate on that?

MR. SARDANA: The interest rate on that is -– if you'll excuse me for one second.

Mr. DeVellis, that rate is a negotiated rate between the corporation and its banks.

MR. DeVELLIS: Right.

MR. SARDANA: And I do stress that this is a short-term line.

MR. DeVELLIS: What is it?

MR. SARDANA: It's a proprietary rate. We -- I don't have permission from our banks to divulge that.

MR. DeVELLIS: Okay. Is it less than 7.25 percent?

MR. SARDANA: Well, of course it's short-term money.

MR. DeVELLIS: So it is?

MR. SARDANA: It's less than 7.25 percent, yes.

MR. DeVELLIS: Okay. And the last paragraph of that - on that page refers to a $20 million bilateral demand line of credit?

MR. SARDANA: That's right.

MR. DeVELLIS: And the line of credit, it says:

"The line of credit bears interest at the bank's prime rate."

MR. SARDANA: Correct.

MR. DeVELLIS: Do you know what that is right now?

MR. SARDANA: Well, again, it's unfortunate that that term in this sentence isn't capitalized, because the prime rate in our short-term lines is a defined term. It doesn't necessarily refer to the prime rate that is quoted in the media and that you can see on screens.

It is also a negotiated rate and it's a defined rate within our credit facility.

MR. DeVELLIS: Okay, but it is substantially less than 7.25?

MR. SARDANA: That's right. It is also a short-term rate. In fact, it's a rate that reflects overnight overdraft deposits or overnight overdraft balances. That's all that $20 million is intended to be for.

And again, you know, we can get into some of the particulars, but it says it's a bilateral demand line of credit. That means that the banks can pull that line of credit away from us without any notice, so it's a rate that reflects that's kind of pricing or that kind of condition.

MR. DeVELLIS: At page 17 of our compendium, we've included a copy of a short-form base shelf prospectus issued by Toronto Hydro Corporation.

MR. SARDANA: Right.

MR. DeVELLIS: In December of 2008, and that was for $1 billion in debentures?

MR. SARDANA: That's right.

MR. DeVELLIS: Okay. And at page 21, you describe the use of the proceeds?

MR. SARDANA: Yes.

MR. DeVELLIS: You say:

"The net proceeds from the sale of debentures –"

This is under the title – the headline "Use of proceeds". It says:

"The net proceeds from the sale of the debentures will be used by the corporation for general corporate purpose, which may include the repayment of existing indebtedness outstanding to the City of Toronto under the terms of an amended and restated promissory note dated May 1st 2006."

MR. SARDANA: Correct.

MR. DeVELLIS: Is that at the promissory note that's at the beginning of this compendium?

MR. SARDANA: That's correct.

MR. DeVELLIS: Okay, and so you've issued this debenture, I guess, to be able to provide the financing to repay that note?

MR. SARDANA: Well, this isn't the debenture, I might stress. This is a --

MR. DeVELLIS: Right. The prospectus?

MR. SARDANA: Yes, that's correct.

MR. DeVELLIS: Okay. And you see at the -- on the next page, page 22 under "Rating" it says:

> "The debentures have been assigned a rating of A with a positive trend by DBRS Limited, and A with a stable outlook by Standard & Poor's."

MR. SARDANA: That's correct.

MR. DeVELLIS: Do you have that? Okay.

And so have you -– have you obtained any pricing for the debentures you intend to issue? Have you got any indication of what the pricing might be?

MR. SARDANA: Again, the indications are as we've stated in our forecast. When we issues that forecast and included it as part of our draft rate order, the indications from the market at that time was that the spread was 350 basis points.

As I also mentioned earlier, when we get closer to pricing the actual issue, we will get a better idea of what the market will be at that time. It could be higher; it could be lower.

MR. DeVELLIS: And so when you -- did you obtain this credit rating specifically for this prospectus?

MR. SARDANA: The -- as part of their normal course of facilitating credit markets and debt markets, the rating agencies are required to rate shelf prospectuses and prospectuses, and they have done so. S & P, I believe, is finalizing its rating on our revised shelf that's dated December of '08.

So they will assign a rating to the shelf prospectus, but it's not a rating on the next series of debt that we'll issue. They will rate that issue when we come to market.

So in your line on that page that you just turned us to, it says: "The debentures have been assigned a rating of A," et cetera. That refers to the series one and series two debentures that have already been issued under the shelf prospectus. It does not refer to the shelf prospectus. They do rate the shelf as well, though.

MR. DeVELLIS: And Now the 350 basis point spread that you that refer to, that's on -- assuming it's a 30-year note?

MR. SARDANA: That's correct.

MR. DeVELLIS: Okay. Did you get any forecast of what it would be if it was a 10-year note?

MR. SARDANA: I don't have that today, or with me.

MR. DeVELLIS: Okay, but -- so you didn't ask for that or you don't –- you just don't have it with you?

MR. SARDANA: I just don't have it with me.

MR. DeVELLIS: Okay. Would you be able to provide that for us?

MR. SARDANA: Yes, we can provide that.

MR. DeVELLIS: Okay.

MR. VLAHOS: Mr. DeVellis, I was hoping that maybe – there may be opportunity to have argument today, so to the extent that – I'm just going to ask you: Is this absolutely necessary? Can you try to ––

MR. DeVELLIS: I ––

MR. VLAHOS: -- pose different questions to get to your – to your concern?

MR. DeVELLIS: Well, what I was going to ask is if there's something that can be provided today, because I assumed it just might be a matter of calling back to the shop.

MR. SARDANA: Mr. DeVellis and Mr. Chair, would you be satisfied if we gave you a ballpark estimate?

MR. DeVELLIS: Well, why don't you tell me what it is and --

[Laughter]

MR. SARDANA: 7.24 percent.

MR. DeVELLIS: 7.24?

MR. SARDANA: No, no, no.

[Witness panel confers]

MR. SARDANA: Yes, so after having conferred, we think it's about 20 to 30 basis points less than the 30-year note. That's where the market spreads are currently pricing us.

MR. DeVELLIS: So let me ask you: Why is it necessary to lock in a 30-year note at times when interest rates are as high as they have been in this decade, at least?

MR. SARDANA: Well, you know, I think that's best answered by looking at the existing debentures that we've got out there right now. They're both 10-year notes, so you know, obviously in a business like we have, the intention is to try and match assets and liabilities.

Our assets are long-lived assets, 25- to 30-year life cycle assets. It makes practical sense and business sense to match up your liabilities with those kinds of assets.

This will be our -- the second part of the equation is that Toronto Hydro, you know, unlike Hydro One that has many, many debt issues in the market, it is our intention to build our own yield curve, so the market can price us properly on the long end, in the middle end and the short end. We haven't got short-terms yet, but hopefully that one day, we will. This is our intention, our first foray into the long end of the mark.

We obviously do confer with market participants. We know there's an appetite for 30-year money, a huge appetite for 30-year money, because there's not a lot of issuance right now.

So -- but again, the practical reality is as we get closer to October, we'll be able to figure out exactly where we issue. Right now, we do want to issue 30-year money, though.

MR. DeVELLIS: Okay, well, and I understand one of your –- your answer to be that you want to stagger your debt issuance.

MR. SARDANA: Right.

MR. DeVELLIS: That's one factor, but isn't another factor to try and minimize your debt cost and not lock in money for 30 years at what are extremely high interest rates, at least in the context of the last 10 years or so?

MR. SARDANA: Maybe that –- you know, it's interesting. High interest rate is a relative term, obviously. If you look at the '80s, seven and a quarter percent is not high, and if you look at the 1990s -- we haven't done that empirical work yet, but we plan to – we don't think seven and a quarter is out of line. If you look at the all-in rates, seven and a quarter is not that bad.

Yes, in the last five years, that would have been a relatively high rate, but I don't think you can look at a period in isolation. And come October, that rate could be seven and a half or 8 percent. I don't know.

MR. DeVELLIS: But we happen to be -– I mean, the economic crisis that we're in has been caused in part by a credit crunch, and so that has put pressure on long-term debt rates; wouldn't you agree?

MR. SARDANA: That's right.

MR. DeVELLIS: So come next year or the year – you know, in a couple of years from now after that eases, you may not be facing rates that are in --

MR. SARDANA: Mr. DeVellis, what would you suggest we do in the case that I think you're postulating, that we go and issue short-term money, and then let's say three years down the road or four years down the road, as I'm facing the maturity of that issue, the yield curve is now inverted because the economy has turned around, inflation has picked up, and so on and so forth. So now I'm looking at an issue that match at a much higher rate for me to get back into the market. So it's a very tough question to deal with. I can assure you, though, that we are very aware of what the market is doing right now. We're on it and we will try and minimize debt costs to ratepayers. That is absolutely our intention.

MR. DeVELLIS: Thank you, panel. Thank you, Mr. Chairman, those are my questions.

MR. VLAHOS: Thank you. Mr. Buonaguro.

MR. BUONAGURO: Thank you. I distributed one exhibit I may be referring to. It’s an excerpt from the web page entitled "Infrastructure Ontario."

MR. MILLAR: Exhibit K1.4.

EXHIBIT K1.4: EXCERPT FROM WEB PAGE ENTITLED "INFRASTRUCTURE ONTARIO"

MR. BUONAGURO: I might get to that later.

CROSS-EXAMINATION BY MR. BUONAGURO:

MR. BUONAGURO: Good morning, panel. I've been listening with interest, and I have to say I'm a little confused. It seems to me that my understanding of the -- what happens to debt is fundamentally different than what I was hearing in terms of what happens on a go-forward basis to the debt issues that we're talking about. So I have a few clarifying questions to start off with.

I would like to start with the settlement agreement that’s appendixed to the previous Toronto Hydro decision that approved this process for your 2009 rates. I don't know if you have copies in front of you.

MR. SARDANA: I don't have a copy of that.

MR. BUONAGURO: It’s limited to the section, obviously, on cost-of-capital and rate of return. It starts at page 7 of 12 of appendix C, I believe.

MR. MILLAR: Do you have a copy, Mr. Vlahos?

MR. VLAHOS: Yes, I do, Mr. Millar, thank you.

MR. SARDANA: We have a copy now, Mr. Buonaguro.

MR. BUONAGURO: Thank you. It starts at 7 of 12. Looking at -- the part that I'm interested in is the last paragraph on the page which I think describes generally what we're doing here today; is that correct?

MR. SARDANA: That's right.

MR. BUONAGURO: So just reading it for the record, it says: "Additionally," and when it says additionally, it means in addition to the paragraph above which talks about ROE. It says:

> "Additionally, parties agree that the forecast cost of short-term debt and new long-term debt in a given test year will be updated using the Board’s methodology for the deemed long-term and short-term debt rates to determine the corresponding rates applicable in that test year."

So when it talks about "that test year," we're talking about 2009; right?

MR. SARDANA: That's right.

MR. BUONAGURO: And there's a good summary at Board Staff Interrogatory No. 2, schedule 2A, which you've already talked about today, and just looking at the second table on the page.

MR. SARDANA: Yes.

MR. BUONAGURO: My understanding is what we’re doing, or what you’re doing for the 2009 test year is forecasting what's called second tranche city note replace; correct?

MR. SARDANA: Correct.

MR. BUONAGURO: And if you look at the $980 million city note that is an actual instrument which you've been taken to I think already today.

MR. SARDANA: Yes.

MR. BUONAGURO: So that's not a forecast.

MR. SARDANA: That's not a forecast.

MR. BUONAGURO: And same with the $180 million debenture.

MR. SARDANA: Correct.

MR. BUONAGURO: And this is an interesting one, I think. The first tranche C note replacement, that actually happened on December 31st, 2007.

MR. SARDANA: That's right.

MR. BUONAGURO: Is there any evidence of that instrument in this proceeding?

MR. SARDANA: The instrument in particular wasn't referred to, but it is part of the $980 million city note, the amended city note. It's pursuant to the schedule that's laid out in that city note.

MR. SEAL: Our updated evidence at the time of the hearing also described and explained that particular issue.

MR. BUONAGURO: So if we look at the table above, it says as updated November 12, 2007. Is that partly what you are referring to?

MR. SEAL: Yes, correct.

MR. BUONAGURO: And it talks about at line 4, city note replacement December 31st, 2007, and it has the amount and the coupon rate.

MR. SEAL: So that's the same one I guess we've just retitled it first tranche for --

MR. BUONAGURO: Thank you. I understood that. But just looking -- you referred to the amended and promissory note, I think. That's the instrument that we're talking about when we're talking about the city note replacement.

MR. SARDANA: That's correct.

MR. BUONAGURO: And that’s the reference to, on page 3 of Exhibit K1.3, is it in here? Is that the reference to last business day before December 31 – sorry, the last business day before December 31st, 2007, the payment of $245 million, is that what we're talking about? That’s the reference?

MR. SEAL: Maybe perhaps some of the confusion is arising from these different notes. The promissory note that has been filed is the original note between THESL and THC which mimics the note between the THC and the city.

That note described the repayment schedule every two years of $245 million. The first and second tranche notes that's we were describing in the table in schedule 2A are new issues, issued to the market, to the public debt market, to receive the funds, the $245 million which are used to repay the promissory note.

MR. BUONAGURO: Where are those notes? I guess we're only talking about one. We’re talking about the first tranche city note replacement.

MR. SEAL: We haven't filed those notes but we can provide those notes.

MR. BUONAGURO: Okay. Now, my understanding -– you might ask me again if I want it filed, I’m just going through this in my mind. My understanding is that at the time you filed for 2008 and 2009 rates, so in the previous rates case, you hadn't negotiated that instrument yet.

MR. SEAL: The December 2007 one had been negotiated and done, as described in our evidence at the time.

MR. BUONAGURO: Okay. Well this one says, "as updated" -– sorry, I’m looking at the first table where it says, "as updated November 12, 2007, Exhibit E1, tab 4, schedule 2."

This is an excerpt from the 2008 evidence; right?

MR. SEAL: Correct.

MR. BUONAGURO: And the original -- I have the original on my computer, and I'll just read the excerpt to you. This is from Exhibit E1, tab 4, schedule 2, filed 2007 August 2nd, page 1 of 1. Is this the one you originally filed in EB-2007-0680?

MR. SEAL: Sorry. Okay, I have that.

MR. BUONAGURO: For the 2009 test year, table 2, you had city note replacement December 31st, 2007, maturity 2037, at a coupon rate of 5.62 percent. So that was the original filing.

MR. SEAL: Which was our original forecast at the time.

MR. BUONAGURO: Right. Okay. And then subsequent to that, you actually entered into an actual note, during the proceeding, I guess, or at least after you filed the application.

MR. SEAL: Correct, after August.

MR. BUONAGURO: Okay. And that note, I'm just calling it a note, maybe that's the wrong term. That December 31st, 2007, note actual had the 10-year term; correct?

MR. SEAL: That’s correct.

MR. BUONAGURO: And a 5.2 percent coupon rate?

MR. SEAL: Correct.

MR. BUONAGURO: But it’s my recollection, and maybe you can correct me if I’m wrong, that note wasn't actually filed in that proceeding, just a summary of the note.

MR. SEAL: And that's what I think Mr. Sardana has indicated that we did not file a copy of that note.

MR. BUONAGURO: Now, so for 2008, it was a forecast and then became an actual note which wasn't filed. So for 2009 we're talking about an actual debt. So in terms of forecasts here, going back to my original line of questioning -- in terms of forecasts, the only forecast that we're talking about here is the second Toronto city note replacement?

MR. SEAL: That's correct.

MR. BUONAGURO: And looking back at the settlement agreement, the forecast -- and I'm paraphrasing from the first sentence -- but the forecast essentially is used for the given test year to determine the corresponding rates applicable in that test year?

MR. SEAL: Correct.

MR. BUONAGURO: I'm emphasising this because of what I heard in Mr. DeVellis' cross, was the suggestion of what's going to happen with that forecast 7.25 rate for 2010. And the suggestion was for 2010, you were going inform file a 3rd generation IRM application; correct?

MR. SEAL: That's correct.

MR. BUONAGURO: And you further suggested that the 7.25 percent would be used in 2010, regardless of what the actual issue was in 2009. Did I understand that correctly?

MR. SEAL: The way the mechanism works, for 2010 our rates will be based on the mechanism applied to 2009 rates, approved rates.

MR. BUONAGURO: But if you --

MR. SEAL: When I say "rates", the distribution rates.

MR. BUONAGURO: But if you go over to page 8 of the settlement agreement, it goes on to say:

"The parties also agree that in the event this proceeding results in a rate order for 2009, the actual amount and interest applicable to any new long-term debt issued in 2008 will be reflected in the termination of revenue requirement in the 2009 test year."

And then it goes on to say, in the last sentence of the same paragraph:

"If applicable, an adjustment will be made in 2010, so that the 2010 revenue requirement will be updated to reflect those parameters for debt actually issued during 2008 and 2009."

Would you agree with me that this suggests that when you are applying for 2010 rates, assuming that you issue debt in 2009, you'll be using the actual debt rate?

MR. SEAL: The settlement agreement that formed part of the evidence was settled on prior to the hearing, and anticipated our three-year filing period. So we had asked for a three-year cost-of-service filing. As a result of the decision, we had a two-year cost-of-service filing, 2008 and 2009 only.

So the settlement agreement anticipated there being a third year. There wasn't, so in my mind the settlement agreement does not cover 2010.

MR. BUONAGURO: Okay.

MR. SEAL: As a result of the Board's decision.

MR. BUONAGURO: All right.

There was also discussion with respect to how the debt is determined each time going forward, and I think it was Mr. McLorg. You were talking about your understanding that at any point -– and this is my paraphrasing you and I think you'll be able to correct me if I'm wring -- you are suggesting that at each point in time that the Board looks at your rates, it has a choice between the actual rate that you negotiate and the deemed long-term rate at the time, and whichever is the lower is going to be applied. And that -– what my understanding of what you are saying is that's what's going to happen going forward at any point in time. Have I oversimplified?

MR. McLORG: Well, if I understand you correctly, Mr. Buonaguro, I think I could agree that at a point in time which may be prior to the determination of a revenue requirement for a given test year.

UNIDENTIFIED FEMALE SPEAKER: Microphone, please.

MR. McLORG: It is on. My apologies, was on.

The rules that the Board has set out in its cost-of-capital guidelines apply, and those rules at a high level state that a revenue requirement for the test year, which is often a forecast test year, will be based on the lower of and achieved cost of debt that -- in contrast to the deemed, which is in effect a maximum allowable cost of debt.

One thing I do want to emphasis, if this is helpful to you, is the fact that the Board guidelines were at least in part designed to provide an indication to utilities of the maximum rate that could be negotiated with affiliated parties. When we're talking about debt that's issued between parties at arm's-length, as would be the case for

Toronto with new debt issues, I think the Board and all parties have to rely on the mechanism of the market governing the rate that would apply for that debt.

So obviously Toronto Hydro One wouldn't go an independent third party and say: We would like pay you some extra above what, you know, you're requiring in the market. That would obviously not occur, and at the same time, that debt issuer would not go to Toronto Hydro and say: We're so happy with you, we're going to give you a lower rate than would apply in the market.

So the independently determined market rate between third parties is in many instances what the Board relies on as being fair at a point in time.

MR. BUONAGURO: Let me take you through an example to see -- to give you my perspective, and we can talk about it.

Going back to the first tranche city note replacement, we've established that there is a note. It's an actual note. And it has a term of 10 years, right?

MR. SARDANA: That's right.

MR. BUONAGURO: And does it have a fixed term of –- sorry, a fixed interest rate of 5.2 percent?

MR. SARDANA: Yes, it does.

MR. BUONAGURO: On the face of it?

MR. SARDANA: On the face value, yes, of 245 million.

MR. BUONAGURO: And you are asking that that face value be used at all times in any year?

MR. SARDANA: Yes.

MR. BUONAGURO: Okay. So you're treating that -- if we go back to the Board's policy -– you're treating that as an embedded debt rate?

MR. SARDANA: That's correct.

MR. BUONAGURO: Okay. And if we go to the Board's report on embedded debt, the quote is:

> "The Board has determined that for embedded debt, the rate approved in prior Board decisions shall be maintained for the life of each active instrument unless a new rate is negotiated, in which case it will be treated as new debt."

Is that what you are relying on in terms of that note?

MR. SARDANA: That's correct.

MR. BUONAGURO: And see, my part of the problem, though, is that at what point has that particular note been presented to the Board and approved?

MR. SARDANA: Well, as I mentioned, it is part of the amended city note, which we have filed as evidence. That amended city note set out a very clear schedule of repayment.

And again, as Mr. Seal has mentioned, this is not incremental debt that THESL has taken on. This is like for like debt; we're replacing one debt stream with another. Where there's no incremental debt that is being added on.

So the 980 million note, over the remaining life -- it's got another five years or so to go -- will come down to zero and will be replaced by successive public market issuances for the same amount.

MR. BUONAGURO: Okay. So you mentioned – you mentioned that -- I guess you were suggesting that it has been approved in part because you filed a promissory note with the amended and restated promissory note, which has a schedule of repayments ––

MR. SARDANA: That's right.

MR. BUONAGURO: -- and which is, I guess, the impetus for this first tranche city note replacement. But you will agree with me that nowhere in the promissory note or the amended and restated promissory note, it talks about an interest rate of 5.2 percent, fixed for the term of the note, for example?

MR. SARDANA: No, it does not.

MR. BUONAGURO: Right, so the board has never been confronted with a note of debt for THESL that says: Beginning December 31st, 2007, we are borrowing $245 million at 5.2 percent, and here are the terms. And the Board has never gone on to say: Well, okay, let's look at the circumstances with respect to the negotiated terms of this particular note to determine whether it's an appropriate –- appropriate to be included in rates. That's never actually happened?

MR. SARDANA: Mr. Buonaguro, one conclusion that your assertion would lead to is that we should keep the $980 million note at 5.36 percent at all times then, because that has been approved, and it's been filed and presented as evidence.

MR. BUONAGURO: Well, I'm really focusing on what's happening in this proceeding.

MR. SARDANA: Yes, I know, and that is part of this --

MR. BUONAGURO: And I'm just trying to figure out what was put in front of the Board with respect to the first tranche city note replacement.

MR. SEAL: Mr. Buonaguro, I was just clarifying with Mr. Sardana some facts. We filed the update during the hearing that talked about the 520 negotiated rate and debt issue. That was filed and Mr. Sardana and I admitted that we did not file the actual note between THESL and THC that corresponds with that. But the evidence is on record of that 520 as shown in this schedule from the updated exhibit, and furthermore, I guess in my view, the Board's decision on 2008 cost of capital included that 520 rate in its calculation of our cost of capital allowed in 2008. So in my mind, the evidence was on record, was available for cross-examination and argument, and a decision was made that included that 520.

So in my mind, the Board has decided that 520 is an appropriate rate for that particular issue.

MR. BUONAGURO: Now, with respect to the second tranche city note replacement, none of that has happened because obviously there is no note.

MR. SEAL: That's what we're talking about today.

MR. BUONAGURO: Right. So that the circumstances around that note won't be reviewed by the Board until: A, it’s actually issued; and B, it comes before the Board for an actual review of the circumstances surrounding the issuance of that note.

MR. SEAL: We're -- maybe the difference is that the 520 note was issued in 2007 while we were dealing with the 2008 test year. So it was an actual note that we knew about that would apply for the 2008 test year.

Now we're talking about the 2009 test year. We've got a forecast of our debt issue and what the rate will be. There's a bit of a difference between those two.

MR. BUONAGURO: The difference being that -- and I think this is where we want to be clear. All we're talking about is a forecast for 2009; correct?

MR. SEAL: Correct.

MR. BUONAGURO: And nothing more should be, I would suggest to you, be drawn from that other than for the purposes of determining 2009 rates, all we’re doing is doing forecasts 2009 and when it comes to the actual note that actually gets put in place to -- and called the second tranche city note replacement and whether that is an actual -- whether the Board can approve the consequences of that note, that's for another proceeding.

MR. McLORG: But I think it's fair, Mr. Buonaguro, to say that in general, there is a passage of notes through the forecast stage into the realized stage and therefore the embedded stage at the next full cost-of-service rate determination.

It's almost always the case that a utility comes before the Board with a forecast of virtually its entire revenue requirement including all elements of cost of capital. The Board, in its tool chest, has already got cost-of-capital guidelines that pertain to the amount that's will be allowed in that forecast revenue requirements in terms of cost of capital and cost of debt particularly.

So for example, if a utility came in forecasting an issuance of debt at a rate higher than the Board's then current deemed rate, the Board’s under no obligation to allow or even consider that forecast because it exceeds the deemed rate.

The next time that rates are reset in a way that's quite analogous to any type of capital expenditure or, for that matter, OPEX, the actual realized cost of the debt will be recognized as embedded, and the Board has assurance that, and so do the intervenors, that that cost has got to be either equal to or less than the deemed rate.

MR. VLAHOS: So Mr. McLorg, if the Board’s deemed rate for 2009 is X percent, and it is 7.2 -– 7.65 -- so say something catastrophic happens in the next little while, while still in 2009, hyperinflation, so that someone cannot access the market unless they are paying double digit rates, okay? So are you suggesting that this system that had to borrow to meet other obligations, serve customers, that this system would be out of luck forever?

I mean that's extreme. I mean that’s where I take your – if I take it to the nth degree, that's where it leads us.

MR. McLORG: I think that THESL would, or any utility would face a choice at the time, and the choice would be either to finance at a cost higher than it knew was allowed and reflected in the revenue requirement and therefore hope that it could get the Board's consideration at a later time to allow the actual cost of debt that was determined in the market for that year.

MR. VLAHOS: But -– moments like this will never happen, that it is an opportunity for that system to come back and say, well, there are legitimate reasons why my cost of debt was higher in 2009, I could not finance lower than 7.62 percent. I read your comments, that, you know, it’s tough luck.

MR. McLORG: It essentially is tough luck, I think, sir.

MR. VLAHOS: I understand your interpretation.

MR. BUONAGURO: Perhaps it would be a good idea -- unless the Board takes a break; shall we do that?

MR. VLAHOS: You’re going to continue with the same area, Mr. Buonaguro?

MR. BUONAGURO: Well, I was going to introduce the exhibit and to make sure I understand what the ...

MR. VLAHOS: Let's take a break, then, 20 minutes.

--- Recess taken at 11:00 a.m.

--- Resuming at 11:25 a.m.

MR. BUONAGURO: Thank you. So I would like to turn to Exhibit K 1.4, which I called just "Infrastructure Ontario". It's a couple of printouts from their website. Have you had a chance to take a look another this?

MR. SEAL: Yes we have, Mr. Buonaguro.

MR. BUONAGURO: Are you familiar with this program?

MR. SARDANA: Yes, I am. If I can also elaborate, our CFO and myself, Mr. Couillard, had occasion to meet with Infrastructure Ontario about two months ago, to in fact explore such type of financing. What we've been told by Infrastructure Ontario that -– you know, obviously there are differences in the rates that they are proposing, because these rates refer to serial and amortizer debt issues, which are, you know, for all intents and purposes, a repayment of principal along the way.

But more to the point, what they emphasized was that their financing program was limited to pure infrastructure-type programs. So for the debt issue that we're contemplating this year, A, it would not qualify, because it's not infrastructure financing; it's a replacement note.

Secondly, what they've also mentioned to us is -- which is potentially problematic if we do go ahead and contemplate doing something with them -- is that their debt would rank senior to our existing debt. So in other words, in, you know, many places in our evidence, we've noted that our debt is what's termed pari passu. It ranks equally with other notes.

To go with Infrastructure Ontario, our debt, out existing debt would come subordinated, and that would be unpalatable to us or to bondholders.

MR. BUONAGURO: Thank you for that. I think it's the first time we've had a chance to talk about Infrastructure

Ontario funding in the context of a utility proceeding. So it's interesting that -- it's good to know that you are talking to them.

MR. SARDANA: Oh, I am.

MR. BUONAGURO: Am I to take from that there is possibility that there might be funding available?

MR. SARDANA: Absolutely. We will not -- haven't turned our nose to them and we haven't shut the door on them. We are, in fact, in communication with them.

As you know, we've also filed a large infrastructure program of our own, our capital spend program, so as opportunities arise to work with Infrastructure Ontario to find cheaper rates, we will do so.

MR. BUONAGURO: I just want to take this as an example, just so I -- one last time to understand going forward what's going to happen. So I understand that you've forecasted the contracted rate for the second note replacement at being 7.25 percent for 2009 forecast purposes.

MR. SARDANA: That's right.

MR. BUONAGURO: And presumably in 2009 you are going to go ahead and issue an actual –- or get into an actual deal. And let's assume for the sake of argument that that was at 7.25 percent.

MR. SARDANA: Okay.

MR. BUONAGURO: And then coming back for either -- let's say you were going to come back in 2010 for a cost-of-service.

MR. SARDANA: Okay, let's assume that.

MR. BUONAGURO: And you are bringing forward that 7.25 percent note for approval to the Board at that time, first time.

MR. SARDANA: That's right. At that time, of course, it would become embedded debt.

MR. BUONAGURO: Right, after the Board approves or looks at the debt rate, the terms of the note.

MR. SARDANA: It's our interpretation of the Board's cost-of-capital guidelines that we go out and issue the debt at seven and a quarter -- I think that was your example –- that then, and as long as that is a market rate that's prudently incurred, then that becomes part of our embedded cost-of-capital.

MR. BUONAGURO: Okay, so when the Board looks for it, at that particular note for the first in your 2010 cost-of-service, I'm sort of -- I think I'm going to incorporate what you are saying, but the Board will be faced with a review of that note, and part of the review will be to determine whether or not, at the time that you entered into that note, it was a market rate?

MR. SARDANA: Correct.

MR. BUONAGURO: All right. And one of the things it might look at is what the current deemed long-term rate is.

MR. SARDANA: It might.

MR. BUONAGURO: At the same time.

MR. SARDANA: Sure. It might.

MR. BUONAGURO: And one of the things that other parties might do is investigate whether that really is a market rate, for example?

MR. McLORG: Sorry, Mr. Buonaguro, just for clarification only, when you just used the term "a current market rate" did you mean current at the time the deal was signed or current at the time the Board is looking at it.

MR. BUONAGURO: Contemporaneous to when the deal is signed.

MR. McLORG: Okay. Thank you. At that time currently.

MR. BUONAGURO: If you're coming forward and saying to the Board: At that point in time we had to enter into the note for these reasons, and therefore we had to go into the market to obtain the funding and incur the debt, and the market rate we were able to achieve at the time was 7.25 percent, and for all those reasons it's reasonable to incorporate it into the rates, that is what your argument is going to be in 2010?

MR. SARDANA: Sure.

MR. BUONAGURO: And you might be faced with the possibility that the deemed long-term rate might be higher, for example, for the sake of the hypothetical?

MR. SARDANA: Sure. I'll grant you that. In fact, the deemed long-term rate is higher today.

MR. BUONAGURO: Right, so we'll use that; 7.62, I believe?

MR. SARDANA: Yes.

MR. BUONAGURO: So let's say that that's constant and the Board is looking at your debt issue and they say: Well, the deemed long-term rate is 7.62. You got 7.25. Let's say that there is convincing evidence, purely hypothetical, that the market rate for example was 7. Or if we use the Infrastructure Ontario -- and I understand what you are saying and this is purely for the example -- let's say that it was clear that you could have funded it in some special way for a rate that's less than 7.25, say at the rates that Infrastructure Ontario is suggesting here.

Is it your position that simply because the 7.25 is less than the deemed long-term rate, 7.62 percent, that you should get it? Or is it your position that, looking at the circumstances of the other time, the Board is looking at it and saying: Well, that was a good, fair deal at the time you made it and therefore it should be approved?

MR. SARDANA: So, Mr. Buonaguro, you know, just following along with your example, under the presumption that the note was -- or the debt was incurred for all the right reasons. It was the -- we needed the money. We had some stipulated payments that we had to make, some obligations to meet, et cetera, the rate was in fact the market rate at the time, we had done our own due diligence of the environmental scan out there that said: Okay, you know, we can't go no Infrastructure Ontario, we can't go to such and such a body to take on that debt, for all of those reasons, you know, it was a prudently incurred note, we would then seek the seven and a quarter percent.

MR. BUONAGURO: Okay, and then --MR. McLORG: Could I just add one short summation of that, just to suggest that the rate per se has to be a qualifying rate, but that is a necessary condition ––MR. SARDANA: Mm-hmm.

MR. McLORG: -- not a sufficient condition. There are other qualifications that Mr. Sardana mentioned around the existence of alternative rates, the prudence of the – or the demonstrability of the need, et cetera, et cetera.

MR. BUONAGURO Right.

MR. McLORG: So we are not saying that just because the rate is -- could I use the term qualifying rate under the guidelines -- that that's necessarily prudent.

MR. BUONAGURO: Okay, and I think maybe we're on the same page now, because what I was hearing earlier was that -- and maybe I misunderstood – but you seemed to be suggesting that as long as the rate was less than the long-term debt rate, that it would be approved. But I think you are saying: No, no, it's more complicated than that. We negotiate a rate at a particular point in time. There are a lot of circumstances surrounding that rate. We bring those circumstances forward to the Board at the time we wanted to take this debt and embed it.

And the Board will look at all those circumstances and determine whether that was a prudent negotiation of a rate and all its related terms at the time.

MR. SARDANA: I think we are on the same page as you, Mr. Buonaguro.

MR. VLAHOS: But Mr. McLorg, is that what you said, though? I'm not sure that I read it as -- you say a necessary condition. What is -- let me just read it:

"Could I just add one short summation of that, just to suggest that the rate per se has to be a qualifying rate --"

But I think Toronto Hydro is meant here.

"-- is a necessary condition, not a sufficient condition."

I'm not sure I follow you. What is a necessary condition? That it has to be under the Board's benchmark?

MR. MCLORG: The necessary condition that I meant to refer to, sir, is that the rate itself be within the guidelines set out by the Board's cost of capital guidelines. So we would know right away, for example, that if it were an affiliate debt and it were above the guideline for affiliate debt that that rate couldn't be accepted into the revenue requirement, the cost flowing from that rate couldn't be accepted.

MR. VLAHOS: So the contracted rate was a market, but the market rate was above the Board's benchmark going back to your comment, it’s bad luck for the utility, that is what you are suggesting?

MR. McLORG: I do apologize if I mislead you or the record in any way, but my understanding of the Board's guidelines are -- is essentially that if a deal is struck between independent parties at arm's length, that that operation of the market is prima facie evidence that the board usually accepts, that the rate applying to that debt is a fair rate. It's a market rate determined without any complications arising from affiliate relationships or anything else like that.

The Board puts special precautions in its cost of capital guidelines around affiliate debt but that's perhaps not pertinent to this conversation this morning.

MR. VLAHOS: Mr. Buonaguro, I don't know whether you have agreed totally with Mr. McLorg as to how your interpretation may be in terms of cost-of-service review for market for a contracted rate which is a market rate but happens to be above the Board's benchmark rate. So perhaps you can leave it for argument.

MR. BUONAGURO: Yeah, I think we're okay. Thank you for that. I have just a couple of -- one question. Mr. DeVellis took you to interrogatory response number 2, and schedule 2A in particular. He was talking about the change between the first table and the second table, the second table being the updated forecast. And noted that the second city note replacement moved up from a projected issue date of December 31st, 2009 to October 1st, 2009 which means that -- I think you'll agree that that means that the $245 million that's being moved from one part of the table to the other happens two months earlier; right?

MR. SARDANA: Yes.

MR. BUONAGURO: Doesn't that mean if we look at -- it's moving from the $900 million city note; right?

MR. SARDANA: Yes, that's correct.

MR. BUONAGURO: Which means that for that $245 million that's moving two months earlier, it reduces the total carrying costs on the $900 million city note between the two tables because it’s two months where you are not carrying that note anymore; isn’t that right?

MR. SARDANA: No, that's not correct. Again, as I noted to Mr. DeVellis, there are some practical implications for us to consider when we go to issue debt in the market. One of the practical implications that I mentioned was that the debt market effectively shuts down in December. It's very difficult to bring an issue to market in December. So while the city note is still due to be and scheduled to be repaid on the last day of the year, last business day of the year, that’s what they require, we will have to go and issue the debt sooner than that because we cannot enter the market, and that drives the current date you are seeing there.

MR. BUONAGURO: I understand all that. I remember that from the cross Mr. DeVellis put in. But what I'm trying to get at though is that in the original forecast, you assumed that $245 million was being moved on December 31st from the city note, the $980 million city note to the new note.

Now you are moving it two months earlier so that under the $900 million city note, there's two months of interest on that that you are not paying any more because you've refinanced earlier than you were going to originally. So that the -- if you look at the $39,405,284 on the top of the column, that should be less because you are carrying interest on that part of the money two months less.

MR. SARDANA: Right. And I guess, Mr. Buonaguro, just to clarify that's where the business reasons come in here. We still are obligated to pay the city up until December 31st, 2009, because they still -- on the full 735 million. So we will have a carrying cost now of 245 million that we issue earlier.

MR. BUONAGURO: I'm misunderstanding then.

MR. SEAL: Well not be paying the cities earlier than December 31st.

MR. BUONAGURO: So you will be carrying both debts simultaneously.

MR. SARDANA: That’s correct.

MR. SEAL: That's correct.

MR. BUONAGURO: I have to ask for a little more clarification to why you would do that.   It's does not intuitively make sense to me that you would carry both debts at the same time rather than pay the one debt as soon as you get the money from the other.

MR. SARDANA: Again, as I have noted earlier, if I could enter the markets on December 31st and issue 245 million and have that note settled, because there is a settlement period that's not the same day in the bond market, then I could get that money, take it in, and pay the city. I can't do that. I have to do it sooner than December and right now our forecast is that we would do that in October.

MR. BUONAGURO: So do you have the money available

October 31st -- October 1st, 2009.

MR. SARDANA: That would mean we would go into the market on or around September 30th, September 29th, have it settled to come in on October the 1st, or I don’t necessarily have to go in two days early, I can go on October the 1st, as well, get the cash and then --

MR. BUONAGURO: So on or about October 1st, 2009, you have $245 million you didn't have before.

MR. SARDANA: That's right.

MR. BUONAGURO: What do you do with the money for two months?

MR. SARDANA: It actually sits in the bank account.

MR. BUONAGURO: Does it accrue interest?

MR. SARDANA: It does accrue some interest, yes.

MR. BUONAGURO: Is that interest accounted for here.

MR. SARDANA: That interest is not accounted for here, no.

MR. VLAHOS: So is the cost of both notes, both Obligations, part of the revenue requirements?

MR. SARDANA: That's what we have in this cost of capital, yes, because there is a negative carrying cost.

MR. VLAHOS: I'm not sure I follow the negative carrying costs. There's an existing note that has not yet paid –- it’s not going to be payable until December 31st. You pay interest on that.

MR. SARDANA: That's right.

MR. VLAHOS: And then there would be the new monies that will be raised based on your proposal October 1st, so for a period of three months, okay, there is a double carrying costs.

MR. SARDANA: That's right.

MR. VLAHOS: And that carrying cost, that double carrying cost is reflected in to your revenue requirements for 2009, in the rate order.

MR. SARDANA: That's correct.

MR. VLAHOS: All right. So, just remind me. You can raise money today, you can sign today and get the money tomorrow and pay -- within a matter of couple days, I think that's what I understand. So you can raise money today and it will all clear in a couple days’ time.

MR. SARDANA: Practically speaking, we can raise money today; administratively, we cannot. In other words, we would not be able to go to market.

MR. VLAHOS: I meant September 29, September 30th, if your target is October 1. If your target is December 31st, you testified that it's a pretty awkward period to deal with financing.

MR. SARDANA: Yes.

MR. VLAHOS: But would middle of December be awkward?

MR. SARDANA: The middle of December is possible as well. It's not recommended to bring a debt issue that late in the game. That's the – that’s, again, the intelligence we are getting from the market. Nobody does a debt deal in December is what we're hearing.

MR. VLAHOS: Can you just help me? Who is going to the market. It's not Toronto Hydro Electricity. It is...

MR. SARDANA: Toronto Hydro Corporation.
MR. VLAHOS: Corporation. So they market it. They can market any time, don't have -- whether it's Christmas or not doesn't matter.
MR. SARDANA: That's right.
MR. VLAHOS: If you sit on that, maybe --
MR. SARDANA: Yes.
MR. VLAHOS: So from their perspective it doesn't matter, there's no specific deadlines; right?
MR. SARDANA: That's correct from Toronto Hydro Corporation’s perspective, there's no deadline. They are, of course, subject to the same practical considerations about not taking a debt issue to market in December because you know again, the market is shut for them too, it's not just for THESL. But the reality over here we is simply cannot pay the city early because the city has said they would like their money on December 31st or the last business day before the end of the year. So on that day, we would wire them their funds and that would satisfy that second tranche.
MR. VLAHOS: So the Toronto Hydro Corporation -- I'm sorry, your payment is to the corporation or is it to the city, directly?
MR. SARDANA: So, Toronto Hydro-Electric System Limited ––
MR. VLKAHOS: Right?
MR. SARDANA: -- would pay Toronto Hydro Corporation.
MR. VLAHOS: Corporation?

MR. SARDANA: That's right, and Toronto Hydro Corporation might, at, you know, the very next minute, wire the funds across to the city of Toronto.

MR. VLAHOS: Okay, so now you have to replace those funds that you had to make payment for, right?

MR. SARDANA: That's right.

MR. VLAHOS: So in replacing those funds, you go back to the Toronto Hydro Corporation?

MR. SARDANA: Right.

MR. VLAHOS: Right.

MR. SARDANA: That's correct.

MR. VLAHOS: And so now they owe you a cheque at, say, December 31st?

MR. SARDANA: That's right.

MR. VLAHOS: Right? But they themselves had to find the money?

MR. SARDANA: Correct.

MR. VLAHOS: So they have to go to the market prior to December 31st, you are suggesting?

MR. SARDANA: That's right. That's exactly right.

MR. VLAHOS: Okay. Thanks.

MR. BUONAGURO: Just one last question on that: I still don't understand why it is that if you can have in your bank account $245 million on October 1st or around that date, why you wait 2 months to pay the city of Toronto and stop incurring interest on that note.

MR. SARDANA: Mr. Buonaguro, it's very simple. The city of Toronto has told us they don't want their money early. It's an obligation that we have. And it's set out in the amended city note, so the note is due and payable to last business day of December of the following years that are set out in the note.

MR. BUONAGURO: Do they have a reason for that?

MR. SARDANA: I think the reason is practical on their side. They would like to collect the interest as long as – for as long as possible.

MR. BUONAGURO: Do you have a sense of what the interest accruing on the money will be if you were -- in the bank account until you pay it?

MR. SARDANA: Well, right now we are earning very little on our money. It is less than half a percent. So that's what the banks are paying these days. And you know our current estimation is that there likely will be one more move down for interest rates, short-term interest rates, on the 21st of this month, which will take that rate down even further. The US is certainly at zero, and we're well along the way.

And that does impact cash balances.

MR. BUONAGURO: Thank you. Those are my questions.

MR. VLAHOS: Thank you, Mr. Buonaguro.

Mr. Warren.

CROSS-EXAMINATION BY MR. WARREN:

MR. WARREN: Panel, as I -- let me see if I've got this right. One of the applications you have before the Board is for approval of a rate order for rates for 2009; is that right?

MR. SARDANA: That's correct.

MR. WARREN: And those rates would be charged effective May 1, 2009; is that right?

MR. SARDANA: Correct.

MR. WARREN: Sometime in October, you are going to go through the series of transactions that Mr. Vlahos has described, and those are going to describe costs associated with them; is that right?

MR. SARDANA: Correct.

MR. WARREN: And are those costs going to be included in the rates you charge in 2009?

MR. SARDANA: Yes.

MR. WARREN: So that the implications are, as I understand it, that you will be including in rates charged to ratepayers the costs of a debt, the terms of which, the duration of which, the interest rate of which this Board has not approved; have I got that right?

MR. SARDANA: I don't believe so. I believe the Board will have approved it on a forecast basis, as they do for any forward test year application for all costs in a forward test year application.

MR. WARREN: And then it's subject to prudence review at some point in the future; is that right?

MR. SARDANA: It's subject to a prudence review at some point in the future when it becomes a –

MR. WARREN: And if the Board determines subsequently in that prudence review that it is imprudent to some extent, then what happens?

MR. SARDANA: Well, then we'll have to determine what happens at that time.

MR. WARREN: Okay. Then in terms of the forecast, you've given us a forecast of how you calculated the interest rate.

Can you tell me what evidence there is before the Board that the Board can determine that the forecast for a 30-year term is a reasonable forecast?

MR. SARDANA: Could you repeat that?

MR. WARREN: Well, you've got -- you are proposing a debt, as I understand it. Your forecast debt is for a certain amount of money at a certain interest rate over a 30-year term; correct?

MR. SARDANA: That's right.

MR. WARREN: You've given some evidence about why – about the amount that you need. You've given some evidence about how you calculated the interest rate.

I'm asking you: Where is the evidence that the 30-year term is a reasonable one, that the Board should approve that forecast? Where is the evidence?

MR. SARDANA: Well, again, Mr. Warren, I mentioned before that one of the business reasons we follow when we look at issuing debt is the attempt to match assets and liabilities.

As I mentioned, our assets are predominantly long-lived assets, and that was the first point that I noted at that time.

The second point that I noted is that Toronto Hydro is also trying to establish itself in the market, in the debt market. We've got two 10-year issues out there now, one due in 2013, another one – the next one due in 2017. We are looking to build our own yield curve, so that pricing, as we continue to issue debt, becomes simpler and easier on both sides, ourselves and the market participants. And a 30-year curve – a 30-year point along the curve is almost a necessity.

Now, whether we do it this time or another time, at some point we are going to issue 30-year money, and the all-in rate that we are getting an indication of from the market is not a bad rate right now.

MR. WARREN: And the risk you take is that at the time the Board does its prudence review, the Board may determine, based on the evidence presented to it at that time, that a 30-year term was excessive.

That's a risk you take; fair?

MR. SARDANA: Perhaps, sure.

MR. WARREN: Okay. Those are my questions. Thank you.

MR. VLAHOS: Thank you, Mr. Warren.

Mr. Millar.

CROSS-EXAMINATION BY MR. MILLAR:

MR. MILLAR: Yes, thank you, Mr. Chair.

I'm going to have to ask you to bear with me for some of this, because I prepared a cross and big chunks have come out of the middle. I think some very good questions, but it may seem a little bit disjointed.

But let me start by asking you to turn to Board Staff IR No. 2. We've been discussing this for some time.

And I think one of the first questions you got from Mr. DeVellis was to remind us where these two charts came from, but could you just repeat that, please? Where is the top chart from?

MR. SEAL: The top chart, as indicated at the top of that chart, is updated November 12, 2007, Exhibit E1, Tab 1, schedule 2.

MR. MILLAR: And that was from the last rates case?

MR. SEAL: From, well, part of this one. The last rates case was 2008 and 2009.

MR. MILLAR: That's right, and when you say "updated" it was updated in that application?

MR. SEAL: It was updated at that time.

MR. VLAHOS: Did you say Tab 1?

MR. SEAL: Sorry, Tab 4.

MR. VLAHOS: Tab 4.

MR. SEAL: Tab 4, schedule 2.

MR. MILLAR: And the bottom chart again? That's from the current --

MR. SEAL: That's from the current evidence.

MR. MILLAR: Okay.

MR. SEAL: 2009.

MR. MILLAR: If I could do you flip ahead to Board Staff No. 5, you provide a chart there that, as I understand it, asks for information similar to what is provided in the bottom chart, or in fact, the same as. But the numbers come out slightly different.

First of all, the coupon rate is two basis points lower, and there seem to be different debt instruments described there. Could you help me with that? Can you explain why they're different?

MR. SEAL: Certainly. The interrogatory asks for the 2008 Board-approved cost of debt. So this is for 2008. We were previously looking at 2009's.

MR. MILLAR: I'm sorry. I was asking about the top. My mistake; I said the bottom chart.

Why is it different from the top chart?

MR. SEAL: Because again, the top chart is for the test year 2009. The chart --

MR. MILLAR: Oh, I'm sorry.

MR. SEAL: -- in Interrogatory 5 is for the test year 2008.

MR. MILLAR: I understand. I thought the top chart was for 2008, so my apologies.

Okay, sticking with Board Staff IR No. 2, before you had that recent discussion with Mr. Buonaguro, I thought that there had been an error in this chart, in fact, but now I think I at least understand what has happened.

And what has happened is, for example, if you look at line 7, this is the new debt instrument for October 1st, 2009, the $245 million principal. If you multiply that by the coupon rate, you are showing a carrying cost of $4.4 million. Of course, if you annualized it over the whole year, it would be significantly more than that, but of course, you have it in place for three months. That's why we have the 4.4 million; is that right?

MR. SEAL: That's correct.

MR. MILLAR: Okay, and then I thought that what would have happened would there would -- is that there would have been a reduction to the principal from the city note which is at line 2, which shows it's 735 million. But if you go across and you multiply that by the 5.36 percent, you in fact get the full 39.4 million.

And now I understand the reason for that is because you don't actually retire the $245 million from that debt until the last day of the year, even though you are taking out the debt October 1st. Have I got that right?

MR. SEAL: That's correct.

MR. MILLAR: And I understand the reason for that is, as Mr. Sardana explained, is that it's difficult to get debt in December; is that ––

MR. SEAL: That's correct.

MR. MILLAR: And is that because it's Christmas or the end of the year? What's the problem with December?

MR. SARDANA: It is partly due to Christmas.

Banks also have their year-end in November. November 30 is their year-end, and they start to close their books, essentially, in December.

So it's hard to get dealers focused in on the market. In fact, they tell us that the markets are shut.

MR. MILLAR: Okay, so I guess to be safe -- if I can put it that way -- you are going three months early; is that right?

MR. SARDANA: That's right.

MR. MILLAR: And the cost to ratepayers for that is 4.475 million dollars, right?

If you could actually get debt on December 31st, you would save ratepayers $4.75 million.

MR. SARDANA: No, not quite. Ratepayers within --

MR. MILLAR: I understand it actually wouldn’t quite work that way because it would actually reflect its way through the coupon rates through the blended average of the coupon rate, and that would be applied against rate base, but -- so 4.474 is not the exact number but it's close.

MR. SEAL: Well, I wouldn't even say it's close.

MR. MILLAR: What is the cost to ratepayers of going October 1st instead of December 31st, ballpark is probably fine. I know that you that might normally want to take an undertaking for that. I suspect we're going to be over the lunch break anyways. Is it something you could calculate over lunch?

MR. VLAHOS: Mr. Millar, wouldn’t it be just the proposed rate of 7.2 percent for 90 days? It is not the opportunity cost to the ratepayer.

MR. MILLAR: Maybe you should ask the witnesses.

MR. SEAL: Is it weighted with all the other debt issues as well. We’d need to work it through the whole cost of capital against rate base and the debt portion of the capital structure and flow it through. I could do that over the lunch hour.

MR. VLAHOS: Mr. Seal, I'm sorry, I don't know why -- I have a simple mind, okay?

You raise money 90 days in advance of what you need it for. At what cost, you propose 7.2 percent, okay. So what's wrong similar me arithmetic. Do you get 90 days, 7.2 percent, okay, of the amount that your proposing to raise, $245 million. What am I missing?

MR. SEAL: I think it's because it's not an interest expense. It's not an expense item directly. This interest cost goes into the cost of capital calculation. So it's the cost of capital, the weighted cost of capital with all our issues against rate base.

MR. VLAHOS: So you are saying that you have recognized in your proposed revenue requirement, which is reflected in draft rates, you have incorporated the tax implications in this.

MR. SEAL: Sorry.

MR. VLAHOS: The tax implications of that additional expense, is that -- if you don't mean the tax implications, I just don't follow your answer.

MR. SARDANA: Mr. Vlahos, maybe I can, and maybe I can make this even muddier, but let me try and clarify.

I think what Mr. Seal is getting at is that it’s, on the face of it, it seems that you could just take the 4.475 and say that's the opportunity cost, you are correct, on the face of it. But I think what happens, then, of course is we take the blended rate that we get over here which is 5.75 percent which is then multiplied by 0.56 which is the long-term weight in the weighted average cost of capital, which is further weighted by 60 percent, along with a short-term rate which is a debt component within that weighted average cost of capital.

So it's not a one-to-one basis point reduction or it’s not strictly one to the next. So when you go through that calculation in the weighted average cost of capital, that's the cost to ratepayers because that's what the return on rate base would come down by which is somewhat less than the what we're seeing over here.

MR. VLAHOS: Somewhat less or -- are you satisfied with somewhat less or do you want a specific amount?

MR. MILLAR: I would prefer to get the calculation. I'm speaking with Mr. Ritchie as I sit here. I think we're not entirely convince that he had is correct so we would like to see the number produced if that can be done over lunch.

MR. SEAL: I would prefer to do it over lunch.

MR. VLAHOS: That's fine. Actually I was just concerned that he may not -- not be possible for us to have oral submissions today, but if you gentlemen can endeavour to get that number over lunch, it would be appreciated.

MR. MILLAR: I would prefer to see the calculation as well, not just the number, the calculation.

MR. SEAL: We'll lay it out all for you.

MR. MILLAR: And we’ll call that Undertaking J1.2, and that is to provide the revenue requirements impact of taking out the debt on October 1st as opposed to December

31st.

UNDERTAKING J1.1: TO PROVIDE THE REVENUE REQUIREMENTS IMPACT OF TAKING OUT THE DEBT ON OCTOBER 1ST AS OPPOSED TO DECEMBER 31^{ST}, AND TO PROVIDE THE COMPARABLE FIGURES IF THE INSTRUMENT WERE ISSUED ON NOVEMBER 1ST AND DECEMBER 1^{ST}.

MR. SARDANA: Mr. Millar, just to clarify for my own means, do we have an undertaking before this one?

MR. MILLAR: There was J1.1, which I think has been cancelled, so why don't we call this J1.1.

MR. SARDANA: Thank you.

MR. MILLAR: So we'll look forward that. Again, on this issue of taking it out October 1st which is because December 1st is a problem, does it have to be October 1^{st}? Can it be November 1^{st}?

MR. SARDANA: Again, as I mentioned, I got two debt issues already in November so I'm faced with a business need to not have all my maturities coming up at the same time in the same month. Now, they will not obviously mature in the same year, but I'll have coupon payments now on November the 1^{st}, November the 7^{th}, November the 14^{th}, and that's problematic from a cash flow perspective.

That's also part of the laddering of maturities, and that's why we've chosen October as our need date, if you will, for this issue.

MR. MILLAR: I don't understand much of that, that's only my own limitation, but is the problem that you don't have enough people to do the work or it's a problem with when the money comes.

MR. SARDANA: It’s a problem with when the money goes out and, I suppose, when the money comes in because I'm collecting money every day from customers. I have to have, I have to manoeuvre cash flows to make sure I have enough to meet obligations on the days that they are due. And it's just a need to not have everything come in at the same time.

You can appreciate that couple days after November 14, give or take, I also have a fairly significant IESO bill to pay which is the in hundreds of millions of dollars. That's really the practical reason for not doing everything in November.

MR. MILLAR: But the problem is not something that could be assisted by you hiring some extra help for a couple of months.

MR. SARDANA: It’s not a -- problem, it’s a cash issue.

MR. MILLAR: Understood. Okay. I don't know how debt instruments work so there may be a very simple answer to this, but is there any reason you can't negotiate the instrument October, September, whenever, but have it payable to you on December 31?

MR. SARDANA: We can, but you can appreciate we will still be liable for the accrued interest over that period.

MR. MILLAR: Oh, is that right?

MR. SARDANA: As soon as we incur an obligation, there’s accrued interest that starts.

MR. MILLAR: So you can't structure it in such a way where you agree to all the terms in October but the money isn't actually transferred to you until December 31st.

MR. SARDANA: I think what you are referring to is a long sub-period, as they call it in the market. Again, you can appreciate that December 31st –- well, let’s put it this way. I have to have the money ready for the city on December 31st. If something goes awry on December 31st with the banking system, et cetera, then there's a risk.

Now to answer your question: Could I arrange to have the money on December 31st? I suppose so. We can make arrangements, but there's an intended risk with that.

MR. MILLAR: How about December 15th, for example, would that minimize the risk?

MR. SARDANA: I would have to think about that.

MR. MILLAR: And that would reduce the carrying costs, I take it.

MR. SARDANA: Yes.

MR. MILLAR: Would we be able to calculate, Mr. Seal, when you provide us your calculation for the revenue requirements impact of taking out the debt three months earlier than you have to actually pay it out, would we be able to calculate – would it be a simple arithmetical exercise to determine what the impact would be if it was, say, November 1st, December 1st.

MR. SARDANA: It's proratable.

MR. MILLAR: If not, could I ask you to put in the numbers for November 1st and December 1st? I know we're asking a lot but I think it might be of some assistance.

MR. SEAL: Okay, I think I can do that. I was prepared, actually, I had done the numbers and prepared to give you an estimate for the undertaking right now but if you would like that extra detail, maybe I'll wait until it’s all...

MR. MILLAR: I wouldn’t mind, because I’d actually like to see the calculation as well, if we could have the whole thing provided.

Just as a preview, are you able to give me a ballpark number for that?

MR. SEAL: I would prefer to wait to make sure I have got all the numbers right.

MR. MILLAR: That's fine.

MR. SEAL: Could we just make sure that’s clear on the undertaking, then, that additional information.

MR. MILLAR: Yes. To add to what’s Undertaking J1.1 now, is to provide the comparable figures if the instrument were issued on November 1st and December 1st.

MR. SEAL: And for the purposes of my calculations, I'll assume the same rate.

MR. MILLAR: That's all fine. Yes, thank you. I'm going to move on, just quickly to another area.

I would like to enter an exhibit. This is a letter from the Board that I think you're all familiar with. It’s a letter dated March 16th related to the cost of capital and current economic and financial market conditions.

Are you all familiar with this letter? I'm going to provide you with copies, but I take it you've seen this letter.

MR. SARDANA: Yes.

MR. MILLAR: We'll call that Exhibit K1.5, and I have copies for Mr. Vlahos and for the panel as well if you don't happen to have it.

EXHIBIT K1.5: BOARD'S LETTER DATED MARCH 16TH

I do have an extra copy.

MR. SARDANA: I do have an extra copy.

MR. MILLAR: And just to confirm, have all three of you seen this letter before? You saw it when it was issued by the Board?

And just to summarize -- I won't get into this too much because I think there have been a number of questions that have sort of teased around the edge of this -– but would you agree with me there's a recognition by the Board, or at least a concern expressed by certain parties that the long-term debt rate is unusual currently, in the sense that it's so close to the return on equity? I'm not saying it's wrong –-

MR. SARDANA: No, I –

MR. MILLAR: -- but it's --

MR. SARDANA: I would not agree with that.

MR. MILLAR: Okay.

MR. SARDANA: I wouldn't say the long-term debt rate is unusual. I would say the return on equity is unusual.

MR. MILLAR: Okay, okay. The spread is unusual?

MR. SARDANA: The spread is – the spread isn't unusual, again. This happens. We've seen low spreads like this from time to time, but if you want my candid opinion, I think the return on equity formula isn't working.

MR. MILLAR: Okay, well -– no, that's fair enough. But the Board, through this process and the invitation to comment, is looking at those issues; is that fair to say?

MR. SARDANA: Fair to say, yes.

MR. MILLAR: And if you turn to page 2 of that letter, you'll see about halfway down, it says:

> "Specifically, the Board seeks comments on the following..."

And then number 2, it says:

> "In the context of the current economic and financial conditions, are the values produced by the Board's cost of capital methodology and the relationships between them reasonable? Why or why not?"

2.1:

> "If the values are not reasonable, what are the implications, if any, to a distributor?"

And 3:

> "What adjustments, if any, should be made to the cost of capital parameter values to compensate or correct for the current economic and financial conditions?"

Do you see that?

MR. SARDANA: Yes, I do.

MR. MILLAR: And then if you flip over to the next page, the top of page 3, the last sentence in the first paragraph:

"The Board expects to make its determination by early June 2009."

MR. SARDANA: Yes.

MR. MILLAR: So it's at least possible, would you agree with me, that there are some changes made to the way the Board does its -- I guess its ROE forecast or its long-term debt forecast or its short-term debt rate? Not forecast, but the number that it uses?

MR. SARDANA: It's possible. Sure.

MR. MILLAR: And I think we've already gone over this before, but just let me make sure I'm absolutely clear.

Let's imagine that this process does lead to some changes in the long-term debt rate, that the Board adopts changes from 7.62 to 7, for example.

MR. SARDANA: Okay.

MR. MILLAR: And let's imagine that you lock in with that 30-year instrument at 7.25 percent, as you've currently forecast.

MR. SARDANA: Sure.

MR. MILLAR: Now, let's ignore 2009, because that's complicated somewhat by this IRM -- pardon me, 2010, because I understand you are coming in for IRM, but let's fast-forward to 2011.

When the Board reviews your cost of capital, including your cost of debt at that time, would the Board be able to look at the discrepancy between the 7 percent and the 7.25 percent, or is it your position that once -- instead, if 7.25 percent is approved in this proceeding, there's no looking at it again in 2011?

MR. SARDANA: I think what we are saying is that in a forward test year, this is our best forecast of when we are going to issue debt and the cost of that debt.

When we come in for 2011 rebasing, the actual issue, the actual rate that that debt was issued on or at would be part of our cost of capital structure. And that's what we would request the Board to look at, at the time.

MR. MILLAR: So you would -- sorry, Mr. McLorg, did you have something to add?

MR. McLORG: Well, I certainly agree with Mr. Sardana in what he said, but I also wanted to add that if the question deals in part with a change not in what Toronto Hydro does, but in the Board's own guidelines, then I think the Board itself would be in an awkward position with respect to the finality of its own decisions and the finality of the rates that follow from them.

If it were the case that at a time that the Board made a decision -- for example, in this application -- certain guidelines applied, but there is the foreshadowing of possible changes in those at a later time.

It really becomes the Board's issue as to whether it is prepared to decide, in the face of possible changes, on the question that we ask it to decide on now.

MR. MILLAR: And I recognize your concern there, and just to make sure I'm clear, I'm not talking about the Board sort of using hindsight to determine -- using hindsight to determine if the rates entered into by Toronto Hydro are reasonable. I agree it has to be done on a -– to the extent possible, on a forward-looking basis.

But what I'm considering is a case where the Board actually updates its long-term debt number prior to you entering into the 30-year instrument.

That letter states: We're looking to do this by June. And of course, you are not looking to enter the instrument until October. So in that specific circumstance, where the Board has actually already updated the number before you enter the instrument, would that change your answer at all?

MR. MCLORG: No, but I would elaborate it a little bit by saying that it's an unusual circumstance that you describe.

I would suggest, on first principles, that a utility would have to be governed in its transactions by the guidelines and the parameters that apply at that time, at the time that the transaction that it's contemplating is about to take place. And it could be the case, as you've outlined, that the utility had earlier proposed a cost-of-service, you know, based on certain assumptions if -- including the Board's guidelines, if between the approval of that application and the time that a debt transaction is worked out, then it could be that the utility would certainly have to take notice of that.

MR. MILLAR: I think I understand your answer. So thank you for that.

Okay. Thank you, gentlemen, those are my questions.

MR. VLAHOS: Thank you, Mr. Millar.

Mr. Rodger, any redirect? Or would you rather wait for me to just clarify some of the things that I have?

MR. RODGER: I'll wait for you. Thank you, sir.

MR. VLAHOS: Okay. All right, that's fine.

Gentlemen, I gather from the responses that I don't think the panel is concerning a longer -- or a question of whether there would be a prudence review or there or there should be a prudence review at the next cost-of-service opportunity, with respect to the cost itself of the note.

That's what I gather from your final responses to Mr. Buonaguro and Mr. Warren. Would that be a fair assessment of what I heard?

MR. MCLORG: Yes.

MR. SEAL: Yes.

MR. VLAHOS: And I don't think anybody followed through with respect to the IRM part of the -- of 2010. So again, give me your understanding about the IRM, obligation of the IRM formula for something that is -- for rates that are set as part of this proceeding.

MR. SARDANA: So, my understanding of that formula is that once rates are set and approved for 2009 ––

MR. VLAHOS: Right?

MR. SARDANA: -- then the mechanism to change those rates for 2010 purposes is based on a formula that takes into account inflation less the productivity measure and less another stretch factor that the Board has set, with the later two variables being known ahead of time and only the GDP IPI as the proxy for inflation measure being determined, you know, at the end of January, I believe, or using the January 31st number in 2010.

MR. VLAHOS: Okay.

MR. SARDANA: And then the result of that mechanistic formula is then applied to the 2009 rates, distribution rates, to set and establish 2010 distribution rates.

MR. VLAHOS: And when the Board talks about cost of capital values, including cost of debt -- and I'm looking at February 24th letter, for example -- I don't know. Do we have copies of that? I'm just – it's ––

MR. MILLAR: Since we're referring to it, perhaps we'll give it an exhibit number, K1.6, the Board's letter dated February 24th, 2009.

EXHIBIT K1.6: BOARD'S LETTER DATED FEBRUARY 24TH, 2009.

MR. VLAHOS: Gentlemen, you'll see on the second paragraph, or the first paragraph, it talks about -- sorry, let me go to the purpose of the letter. It says:

> "Cost of capital parameter updates for 2009 cost-of-service applications."

Right?

But the second paragraph makes reference to the second generation incentive regulation. Is this simply the title of it?

Mr. McLorg, I'm looking at you on this one. Is this the title of December 20th, 2006, document as opposed to actually applying to second generation incentive regulation?

MR. SEAL: If I may be of help, Mr. Chairman, yes that is exactly the full title of that document. It dealt with both issues.

MR. VLAHOS: So cost of capital change issues then do not enter into the IRM formula, that's your understanding. That's your interpretation.

MR. McLORG: We’re unanimous on that, Mr. Vlahos.

MR. VLAHOS: You are. Unanimous between the three of you.

MR. McLORG: Yes, that's right.

MR. VLAHOS: Now, I don’t want to complicate life, but there is a provision in a 3rd generation IRM, the so-called incremental capital module.

MR. McLORG: Yes, that's right.

MR. VLAHOS: Does that complicate anything in terms of cost of debt, cost of capital or --

MR. McLORG: I would myself suggest, sir, that that deals with adjustments to rate base rather than to cost of capital per se. There's no mention of cost of capital adjustments to my knowledge as part of the capital adjustment mechanism in the future.

MR. VLAHOS: Can I ask, while I have the witnesses here, whether any of the intervenors want to take issue whether this cost of capital adjustments apply to the IRM process?

Mr. Buonaguro?

MR. BUONAGURO: I'm still thinking about what my submissions are going to be, but I would suggest off the top of my head that that could be something that would come up in their application for 3rd generation IRM. This particular case is to determine their 2009 revenue requirements and then therefore draft rate order. I don't think -- I think the settlement agreement fairly determines what they’re supposed to be doing, and we’re going into the details of what they are doing in this case.

What happens in 2010 can be determined in the 2010 application and I guess the only really issue is whether or not any decisions that you make here are going to impact that and I don't think that -- that particular nuance, I don't think impacts that. What happens in 2010, a rate application as a result of the 2009 application with respect to how they incorporate their forecasted cost of capital number based on their forecasted debt rate, I don't think that this panel has to determine.

I guess what I'm saying is I would tend to defer that inform the next panel -– to the next rate case.

MR. VLAHOS: So you are, I don't want to discuss your argument, but I guess you’re going to suggest that there should be a review and the panel has agreed there should be a review of some kind, and what I guess what I'm after is whether that review should happen before the next cost-of-service review.

Would you argue that it should happen as soon as the next application like the IRM? That's why I'm asking this question whether I want to follow-up with the witnesses to get some better understanding as to what their my understanding is about the IRM.

MR. WARREN: That would be my position, sir.

MR. VLAHOS: That would be your position?

MR. WARREN: Yes.

MR. BUONAGURO: I've sent an e-mail seeking some help with that issue, which I hope to get over the lunch.

MR. McLORG: Mr. Vlahos, if I may, did I hear you correctly that you will be inquiring of this panel our reviews on that question?

MR. VLAHOS: I just asked, and I thought you were in agreement, the three of you, that the cost of capital, including debt, those parameters do not enter into the IRM process in your case for 2010; right?

MR. McLORG: That's fine, and that clarifies it for me. Thank you.

MR. VLAHOS: I thought that's what you responded.

MR. McLORG: That's correct.

MR. VLAHOS: And you heard there may be different views, different arguments on this.

I don't want to ask any more questions. I'll wait for the arguments.

Mr. Sardana, the December 31st date, is this -- I guess this has this history to it, right, December 31st date.

MR. SARDANA: I’m sorry.

MR. VLAHOS: The December 31st date has some history with the initial, I guess, initial offering; right?

MR. SEAL: It does, in the amended city note.

MR. VLAHOS: So how can that be changed going forward?

MR. SARDANA: Quite honestly, Mr. Vlahos, the remaining life of that note is short. It's due to mature in May 2013, and our shareholder, that is the city of Toronto, is very reluctant to change the terms now. There is another issue around that note that in order to effect any further changes to the once amended city note, we have to get the okay from all the other public bondholders of our existing two notes and while that may -- it's not a simple task to go and do that.

MR. VLAHOS: Do you have any other debt instruments that terminate December 31st?

MR. SARDANA: No.

MR. VLAHOS: No. It's not a popular date, is it? Okay.

Mr. Rodger, those are my questions. Over to you.

RE-EXAMINATION BY MR. RODGER:

MR. RODGER: Thank you, Mr. Chairman. Just a couple of points.

Mr. Sardana, one of my friends in his questions to you asked what the evidence was before the Board about this move related to the second city note repayment December 2009, the extension from 10 to 30 years. Was this issue dealt with in the earlier rate case or is this being raised for the first time?

MR. SARDANA: I don't believe there is any issue with the term. The 30-year term was what we filed in our original application.

MR. RODGER: If I could also turn to the settlement agreement that some of my friends have referred to. If you turn to page 8, and I'm correct when I say, Mr. Sardana, that the cost of capital and rate of return, we had complete settlement on this issue; is that right?

MR. SARDANA: That is my understanding, yes.

MR. RODGER: And on page 8, under the rationale, it reads as follows:

> "By proposing to use the Board’s methodology for determining the long-term and short-term debt rates, adjusting the cost of debt is nearly as mechanistic as adjusting the return on equity. Parties agree that the method described above adequately protects both ratepayers and the company from exogenous changes in interest rates and debt timing issues over the three-year test period. This mechanism mimics the adjustment that would be made under single year cost-of-service applications, in that the embedded (i.e., actual) cost of issued debt is reflected in rates for all years subsequent to the test year."

What's your understanding about how both ratepayers in and the company are going to be protected through this approach?

MR. SARDANA: My understanding from that is that there is an automatic adjustment mechanic when you come in for your next rebasing, with your next rebasing application in that the cost of capital is adjusted to reflect all the embedded structure that is inherent to the company.

MR. RODGER: Throes are my questions. Thank you, sir.

MR. VLAHOS: Thank you, Mr. Rodger.

Okay. Mr. Millar, anything else?

MR. MILLAR: No.

MR. VLAHOS: I guess we have to talk about argument. Mr. Roger, my preference is to hear oral argument.

Does any of the parties object? Okay. So -- but it seems that we have plenty of time ahead of us, so I will be guided by what your wishes are, how long you would need before we resume.

Mr. Rodger, you want to go with the argument in-chief or are you going to wait for reply argument?

MR. RODGER: I could probably just wait for reply argument.

MR. VLAHOS: Okay. Then we'll start with the intervenors.

Mr. Millar, are you going to have any submissions?

MR. MILLAR: We may have a brief submission, and we would like to see the undertaking response.

MR. VLAHOS: Right. That's what I want to discover now. I guess parties, at least some parties would like to look at that information, the response to the undertaking so can some arrangement be made for this to be produced, say, in about an hour, and then after the hour, then maybe another half hour so total of an hour and a half.

MR. MILLAR: Return at 2 o'clock.

MR. VLAHOS: Is that okay? As long as the company can sort of locate the intervenors somewhere to provide the answers. Is that workable?

MR. SEAL: I can certainly turn around the numbers easily, within an hour.

MR. VLAHOS: Mr. Warren?

MR. WARREN: My submissions -- it won't take me more than five minutes to make the submissions, Mr. Chair.

MR. VLAHOS: If you have the information, I want to proceed now. I'm okay. The reporter is fine.

MR. WARREN: I would like to see the information.

MR. VLAHOS: Hour-and-a-half is to give them the hour to provide the information, and half hour for -- you may need five minutes, but Mr. Millar has more advisors.

MR. SARDANA: If it helps everyone, we can turn it around in 30 minutes. If that helps you, Mr. Warren.

MR. RODGER: Two o'clock. It might give us some time to consider some of the issues that have been raised this morning that we weren't aware of.

MR. VLAHOS: So let's resume at 2 o'clock then.

--- Luncheon recess taken at 12:25 p.m.

--- Upon resuming at 2:02 p.m.

MR. RODGER: I think I was just going to reply to my friends.

UNIDENTIFIED SPEAKER: I thought there was the ––

MR. RODGER: Oh, yes. I'm sorry. Yes, the --

UNIDENTIFIED SPEAKER: -- response to the undertaking.

MR. RODGER: Yes. Mr. Seal, could you take everyone through the chart, please?

MR. SEAL: Certainly. So what I've provided is a spreadsheet that shows three scenarios against what we've actually applied for in our application.

The first set of boxes at the top are as we applied for, so you can see that I've highlighted in there that the overall cost of debt is the 557, column five, in column five.

That 557 goes into the capital structure at the 56 percent weighting, so that's columns 9 and 10, to show you where it shows up in the capital structure, from which is calculated then the overall return in column 11, 638.

Then the 638 cost of capital times the rate base of 2035 in column eight, gives you your return on rate base, 129.8.

So that's our base; the 129.8 is the return on rate base component of our revenue requirement.

Stepping down then to the next box is the assumption of a November 1st issuance of this second tranche note. So you'll see I have issue date of November 1st, 2009, at the 725, same rate.

So the resulting overall cost of debt for 2009 gets lowered to 5.55 percent, as a result. So plugging that long-term debt into the cost of capital model results in an overall cost of capital of 6.36, again on the rate base of 2035 gives you a return on rate base of 129.5 million.

Compared to our base of 129.8, that's a reduction in the revenue requirement of $300,000.

So that's just walking you through the calculations and what the implications are for our revenue requirement.

The next two, then, the next two scenarios are a December 1st issuance of that note, and then a December 31st, like the last day of the year issuance of that note.

And you'll see the revenue requirement implications, a reduction of 700,000 and a reduction of a million, if you move it right out to the 31st.

MR. SARDANA: If I could just add two small points to Mr. Seal's comments, the first is you'll note that the table has footnote references. That just refers back to the footnotes that that we had in the original chart in the filing. For expediency, we copied the tables quickly.

And I think that was actually the only point I had to make.

MR. SEAL: There was a small typo in the one that was sent out electronically, so the last scenario, the issue date should be December 31st, 2009, not 2007.

MR. SARDANA: Sorry. I'm sorry, Mr. Chair, there is one other point. These impacts ignore PILS.

MR. VLAHOS: Which means?

MR. SARDANA: Which means that we didn't factor in the PILS impact of the change in the revenue requirement.

MR. VLAHOS: So if I were to take the $1 million change, that has to be grossed up?

MR. SARDANA: That's right.

MR. VLAHOS: So up would be one point -–

MR. SARDANA: I'm not sure. That's --

MR. VLAHOS: Four?

MR. SEAL: Sorry, I don't think it would be grossed up.

MR. SARDANA: I think it would be grossed down.

MR. SEAL: The implications are that with the lower revenue requirement for the return component, the PILS would be lower.

MR. SARDANA: Yes.

MR. VLAHOS: Right, so the revenue requirement would be lower?

MR. SARDANA: Correct.

MR. SEAL: Right.

MR. VLAHOS: So the one becomes 1.4. Well, whatever it is, but it's my direction that -– as I suggested it's a step in terms of the impact on the revenue requirement.

Before we have an opportunity to ask questions, I just want to ask one question for now, if I can.

Again, if one looks in a sort of a simple way that, you know, the company now is going to be paying a certain percent, 7.25 percent, on an amount of money that is not going to return much, other than, you know, whatever the bank gives you, and when you say -– and that amount, 7 percent on -- what was it -- 245, so what's that, Mr. Seal?

MR. SEAL: I want my calculator back.

MR. SARDANA: The annual cost of 245 million is 17.8 million.

MR. VLAHOS: All right, so divide that by four so you can get the three months' impact.

MR. SARDANA: Yes, 4.4 million.

MR. VLAHOS: Four point four million? Okay. So $4.4 million would be paid out by the utility, right, but your revenue requirement adjustment is only -- one and something million dollars, right?

So the utility's out-of-pocket somewhere, isn't it?

MR. SEAL: I think the difference really results from the difference between potentially actual capital structures and deemed, the deemed structure that we have here.

MR. VLAHOS: Right. I'm looking from the revenue requirement point of view.

MR. SEAL: Right. So there we're using the deemed capital structure with the deemed components, long-term debt, short-term debt and equity.

MR. VLAHOS: Mr. Seal, I'm sorry. You are going to be paying out to someone $4.4 million, right? And at the same time, you know, the Board may reduce the revenue requirement for 2009 by another -- whatever is it here, a million dollars or ––

MR. SEAL: Yes.

MR. VLAHOS: Okay? So what happens to that -– what happens to that money?

MR. SEAL: There is a budget impact, there's no question. So under your scenario, if we in fact issued on October the 1st, THESL would be out of pocket

MR. VLAHOS: If it's a budget impact, why would you want to force it for October 1st?

MR. SARDANA: Well, again, sir, it's not that we're trying to force it for October 1st. That's the current forecast that we have right now. This is where we want to enter the market.

MR. VLAHOS: Okay. Mr. Buonaguro, you had your --

MR. BUONAGURO: I was keen to follow up, if I could. That's fine.

Thank you for this. It's very enlightening, I think. I just want to ask a couple questions.

I was looking at the tables and I saw -- and let me make an assumption and you can tell me if I'm right or not. If you look at the last table, it assumes December 31st issue of second tranche city note replacement, which basically says: If we do the replacement on the last day of the year, then this is the impact. And the impact there from your applied-for cost of capital is $1 million, right?

MR. SEAL: For the revenue requirement, yes. Correct.

MR. BUONAGURO: Okay. It strikes me that if I wanted to get the revenue impact difference between your applied-for and the situation where you don't do the issuance at all in 2009, it's very, very, very, very close to this scenario; is that right?

MR. SEAL: Correct. It's one day's worth.

MR. BUONAGURO: So in fact, if I put zero under the principal number and zero under the carrying costs and zero under coupon rate in your formula, I think you get out to the exact same coupon rate, 5.49 percent, which then gets carried out to rest the table?

MR. SEAL: Right. I think that's correct.

MR. BUONAGURO: So the difference then -- I'm going to do the calculation on my computer, because you gave me the Excel spreadsheet.

So if I zero out the principal of 245,057,739 for the second tranche city note replacement, I get the exact same coupon rate, 5.49 percent with the same impact, $1 million, which suggests to me that the difference between your applied-for cost of capital, based on doing this financing at the 7.25 percent rate in October 1st, 2009 and not doing the issuance at all and just leaving the money in the city note, the existing city note at $735 million, is $1 million, plus PILS impact or minus PILS impact.

MR. SARDANA: Mr. Buonaguro, I just want to clarify. We don't have an option to not issue this note.

MR. BUONAGURO: No. I'm just trying to quantify the revenue requirement impact of the note itself. And this is a scenario where to completely take out the impact, right, and when you completely take out the impact of reissuing the note -- because in your table here, you've maintained the principal of the original May 6th, 2003 note.

You've maintained without deducting the effect of the second tranche note?

MR. SEAL: Because is it in place until the end of the year, period.

MR. BUONAGURO: Absolutely. I understand that.

I'm just trying to say if you had the option of not issuing the note at all -– and let's say it was issued January 1st and therefore it would escape 2009 rates all together; correct?

MR. SEAL: Correct.

MR. BUONAGURO: The impact would be from your applied-for million dollars.

MR. SEAL: That's what I thought I was showing in my undertaking. But I put it on the very last day.

MR. BUONAGURO: I understand. I just wanted to make sure that I understood that correctly. So the impact in 2009 of this whole debt rate issue with respect to the second tranche city note replacement at its maximum is the first one, I guess, is the difference between your applied for return on rate base of 129.8 million which means you get exactly what you want, right, and 128.8 million which is you don't get to reissue it at all, which is different of about $1 million.

MR. SEAL: Correct.

MR. BUONAGURO: See, I didn't understand that until you put out the Excel spreadsheet. That's why I wanted to confirm.

Thank you, those are my questions on that.

MR. VLAHOS: Thank you, Mr. Buonaguro. Mr. DeVellis.

MR. DeVELLIS: Thank you. I just want to understand Toronto Hydro's understanding of what happens in 2010 if we take -- doesn't matter which scenario you assume, but if you assume the last scenario, December 31st, the note is issued December 31st. So your weighted average cost of debt is 5.49 percent and your return on rate base is 128.8 million. And then what, in your view, happens in 2010? You take that $128.8 million and it's indexed per the incentive regulation formula or does the weighting change at well?

MR. SEAL: Neither. In 2010, our distribution rates will increase by the price index less the productivity component, the stretch factor. That's how it works.

MR. DeVELLIS: Right. Okay.

So the weighting here, essentially, in terms of your rates, the weighting you show here in your last box, that wouldn't change. Basically you are taking your rates and you’re inflating them by whatever the formula is.

MR. SEAL: That's how the IRM formula works.

MR. DeVELLIS: Okay. Thank you.

MR. VLAHOS: Mr. Warren, any questions?

MR. WARREN: I don't have any questions.

MR. VLAHOS: Okay. So Mr. Warren, who going to go first in terms of the argument?

MR. WARREN: I'm happy to defer to the others.

MR. VLAHOS: Mr. DeVellis, go ahead.

ARGUMENT

CLOSING ARGUMENT BY MR. DEVELLIS:

MR. DeVELLIS: I have three points to make. And the first is with respect to what the Board is approving in this proceeding. I think we've had agreement that this is simply a forecast of what the replacement cost of the second tranche city note will be. The Board has not had an opportunity to review the actual contracted debt instrument and so that review will need to take place when the actual cost -- after the actual cost -- actual instrument is contracted. When that happens, the Board, in our view, should to review the prudency of the contracted rate and in doing so, it should ensure that it applies with the guidelines, that is, that it's a lower of the contracted rate or the deemed rate but also it complies with the Affiliate Relationships Code for electricity distributors, and that is the contracted rate can be no higher than the market rate.

I think that the applicant agreed with that this morning but whether they did or not, in our submission, that is what we think should happen the next time that Toronto Hydro comes in for cost-of-service rate application.

With respect to the timing of the debt issuance, as you've heard, Toronto Hydro -- the applicant submits that the debt should be issued October 1st and the rate should be set accordingly. We heard evidence that the debt does not need to be replaced until December 31st.

In our view, this Board cannot approve rates or a cost as of October 1st when the money due until December 31st. Just remember that the debts cost that the Board approves are based on rate base and the rate base was approved -- the 2009 rate base approved in the rate proceeding originally. It has not gone up.

So essentially what the applicant is asking you to do is to approve debt costs from October 1st to December 31st that aren't mapped to their rate base. And we don't think that's appropriate. So the appropriate date should be December 31st which is when the money is needed to replace the existing note.

That leads to my last point and that is what exactly we're doing here. We saw that the revenue requirements impact, assuming the December 31st issuing date for 2009 is de minimus, and also that amount, in our view, would be carried through to 2010 under the IRM formula. The forecast – what we're trying to do is approve a forecast seven months in advance for 2010, when it really has no impact on 2009's revenue requirements.

In our view we don't really need to even approve this forecast, and I think the company’s evidence has been, well, the forecast of 7.25 percent is based on the Conference Board, the current long-term debt rates plus a spread. We haven't had any evidence what the actual market rate would be if they went out month the market right now. What Mr. Sardana, I think, said was -- what they have been told is what the corporate spread is between the long Canada forecast and what rate would be given, but we don't have any evidence of what the actual rate would be.

In our view, there really isn’t enough information to even provide a forecast but -- so we don't think it's necessary to even approve this forecast. As I said, in our view, the revenue requirement impacts for 2009 is de minimus, but even if you do, as I said, the forecast or whatever the contracted rate ends up being needs to be reviewed on a prudency basis in the next cost-of-service application.

Subject to any questions, those are my submissions.

MR. VLAHOS: Thank you, Mr. DeVellis.

Mr. Buonaguro, do you want to go?

CLOSING ARGUMENT BY MR. BUONAGURO:

MR. BUONAGURO: At the risk of giving you more of the same. There are obviously three applications before the Board, and we only -– I only have submissions on the one and that's the approval of the draft rate other and specifically the debt rate.

We came into this proceeding with two concerns: One, what's going to happen for 2009 in terms of rates and whether the forecasts that are required under the settlement agreement in the 2008 rate case were reasonable. And then two, what’s going to be the effect -- or to ensure that there were no unintended effects going into 2010, 2011, 2012 and so on.

As we clarified for 2009, based on the exhibit we just received, the issuance of a new debt which is really the only thing that required forecasting for 2009 has a de minimus impact. It doesn't really matter whether they – I shouldn't say that. The revenue requirement impact difference between issuing the debt at 7.25 percent in October and issuing the debt in some other year, 2010 or 2011 is $1 million before you reduce it for bills impact, from what I understand and -- for 2009. On that basis, as Mr. DeVellis said, there is no real reason to twist ourselves in knots to figure out whether the forecast for 2009 is appropriate, given that the impact, even if they hadn't done it at all, is de minimus. The larger concern and why we primarily were intervening and participated is to ensure that when the actual contract is put in place, that it be done on a prudent basis and that the prudency of that contract be reviewed if an appropriate forum.

Now, there was a question the Board put forward about whether or not it should be -- something should happen before the next cost-of-service on the basis that the company said they are going to do 3rd generation IRM in 2010, and for 2011 come back for cost-of-service and the company said it wants to do the review of this particular issuance of new debt in 2010 as part of its – or, sorry, as part of its 2011 rates case.

The question was, well, should it be done earlier given that they are going an IRM in 2010. The fact is based on the review of the revenue requirement impact in 2009, the impact in 2010 is equally immaterial, such that there's no reason that it should be advanced beyond a -- before 2010.

Having said that, we'll have to be careful that when this issue comes back in 2011, that there's an appropriate record for the Board to be able to review the issuance of new debt, and therefore the company should be vigilant, as I'm sure it always is, to properly document how it enters into the contract terms when it actually does, and that it be wary of things like the differing terms of the possibility alone, which I think it's acknowledged in its interrogatory responses; in particular, I think it's Interrogatory Response No. 3 to Board Staff.

It is looking at differing terms, five-, 10-, 30-year rates, to see if it can maximize the savings to ratepayers in terms of what debt rate it actually ends up incurring in the beginning of October 2009.

But all that information should be properly available to the Board and to intervenors when they actually come forward to have this particular debt instrument and any other new debt that it issues between now and their cost-of-service, that that information is properly before the Board so that the Board can properly review it before it makes the transition into embedded debt that's been approved by Board.

Subject to questions, those are my submissions.

MR. VLAHOS: Thank you, Mr. Buonaguro.

Mr. Warren?

CLOSING ARGUMENT BY MR. WARREN:

MR. WARREN: Yes --

UNIDENTIFIED SPEAKER: Excuse me. Microphone, please.

MR. WARREN: As is apparent from the exchanges today among -- with the witness panel and also including yourself, sir, there is a certain amount of -- there are differing opinions as to the impact of the formulaic -- or the application of the mechanistic updates.

And the concern of my client, Mr. Chairman, coming into the application was similar to that of my friends, Mr. DeVellis and Mr. Buonaguro. It was to determine what it was that the Board was approving, in particular, to determine whether or not the Board was approving a dead issuance for 30 years, and this amount at the forecast debt rate.

And I take it now that there is universal agreement that the Board is, at the highest, approving the forecast and that there will be a prudence review at some point.

The second issue, then, is when that prudence review is to take place and I differ, I think, from my friends on the same side of the table in this, in that the terms of the review of Toronto Hydro's rates are, in my respectful submission, as a result of a settlement agreement in the last case, somewhat different than they are for other utilities.

And I would refer the Board to the settlement agreement in EB-2007-0680, and in that case – just by way of background -- Toronto Hydro applied for a somewhat unusual form of relief. They applied for an approval of cost-of-service for a period of three years, and the Board in the decision said: No, it will be two years.

And then that -- but it also prescribed the mechanisms, if you wish, that were to apply for 2008 and 2009, leaving open, in my respectful submission, precisely what was to happen in 2010.

Now, I take it from the witness panel's answer this morning their intention is for 2010 to file a 3rd generation IRM application, but what troubles me, Mr. Chairman, is the wording of the settlement agreement issue on this issue. And I refer you to page 8 of the settlement agreement, where the following sentence appears:

> "Parties agree that in the event that this proceeding results in a rate order for 2009, the actual amount of interest rate applicable to any new long-term debt issued in 2008 will be reflected in the termination of revenue requirement for the 2009 test year. That is, the actual cost of embedded debt subject to the Board guidelines will be updated prior to the commencement of the next test year. If applicable, an adjustment will be made in 2010 so that the 2010 revenue requirement will be updated to reflect those parameters of debt actually issued in 2008, 2009."

In my respectful submission, the meaning of those words is clear, which is that for purposes of 2010, regardless of the fact that is it in form a 3rd generation IRM application, that the actual debt has to be reviewed. And that means that the prudence review has to be moved up from the 2011 cost-of-service review to the next rate case or the next filing, which would be for 2010.

On that, I may differ from my friends Mr. DeVellis and Mr. Buonaguro.

Having said that, in my respectful submission, this exercise today, however confusing it may have been at various times for all of us, has been a useful one in illustrating some of the problems we have in coming to terms of how to approve these mechanistic updates.

In my respectful submission, my final point is simply to ask that we be awarded a hundred percent of our reasonably incurred costs.

Thank you for that, Mr. Chairman.

MR. VLAHOS: Thank you, Mr. Warren.

Gentlemen, before we go to Mr. Rodger, I'm not clear as to whether you're suggesting that given the de minimus impact on the revenue requirement for 2009, whether we -- whether you are suggesting there is some reduction in the revenue requirement which is reflected into the draft rate order or not.

I wasn't clear from all three of you. You all spoke about the de minimus impact, but I wasn't sure whether -- what do you want the Board to do?

MR. DeVELLIS: Well, when I said de minimus impact, I didn't mean from the Applicant's proposal, and our proposal that the debt should be issued as of December 31st. That is a million dollars.

MR. VLAHOS: Right.

MR. DeVELLIS: But when I say de minimus, I meant assuming you agree with us that the debt should not go into rates as of October 1st, because if they don't -– if the Applicant doesn't need the money October 1st and that it should actually be December 31st, then we see that the impact is something less than $48,000 for 2009, because that's the amount shown on Undertaking J1.1, under the last scenario where it has 7.25 percent and the impact is $48,642 dollars and that flows through to the rate base.

But that -- and it shows a million dollar rate of impact, but that impact is as against the applicant's submission of that is the debt goes in October 1st.

So that's not what I meant when I meant -– when I said de minimus. What I meant is if you take out the -- in the last scenario, if you take out the second tranche city note being issued on December 31st, 2009, if you took that out completely, that has a de minimus impact on the revenue requirement. So that is $48,000.

That's what I meant. Not from what -– I'm not sure if I'm making myself clear.

MR. VLAHOS: No, I thought I was following you and then I saw Mr. Rodger shaking his head and I thought I was -–

MR. DeVELLIS: In other words, assuming you agree with us that the amount -– the proper -- the right date of December 31st –-

MR. VLAHOS: Well, Mr. DeVellis, let me tell you. Theirs is a draft rate order, right?

MR. DeVELLIS: Right.

MR. VLAHOS: It has certain rates in it.

MR. DeVELLIS: Right.

MR. VLAHOS: Those rates reflect the revenue requirement as proposed by the applicant.

MR. DeVELLIS: Yes.

MR. VLAHOS: So my question was that we have a draft rate order, okay, based on certain presumptuous assumptions about approval.

So the arguments that I heard from you three gentlemen about -- it's not a big deal because of -- for all the reasons that, you know, the panel explained. Then is your suggestion that we just accept the draft rate order because of the de minimus nature of any adjustments, subject to Mr. Warren's -– whether, you know, what's the next opportunity to review this thing?

MR. DeVELLIS: No, that's not my submission.

MR. VLAHOS: It's not? Okay. So maybe you can help me. So what do you want the Board to do?

MR. DeVELLIS: My submission is that the October -- the draft rate order assumes October 1st implementation date for this new debt.

MR. VLAHOS: Right.

MR. DeVELLIS: My submission is that is an incorrect date. The proper date should be December 31st.

MR. VLAHOS: All right. So if it is December 31st then what is the adjustment that the Board should order?

MR. DeVELLIS: That would be a million dollars. That's what is shown on –-

MR. VLAHOS: All right. Thank you.

MR. DeVELLIS: -- Undertaking 1.1. What I'm then saying is assuming you agree that it's December 31st, then this debt would be in place for one day of 2009. So really the impact is not 2009; it's 2010. So the impact of 2009 rates, assuming it's December 31st implementation, that is $48,000.

That's what I say is de minimus, and that's why I say if you agree it's December 31st, then you have a de minimus impact, not from what the Applicant has proposed, but in the revenue requirement for 2009.

And then that leads to the question of should we even bother forecasting a rate for 2009 when it has almost no impact, assuming December 31st impact --

MR. VLAHOS: So if we don't assume any forecast, then what's the order that the Board makes?

MR. DeVELLIS: Well, I guess there is no order. The order is that the draft rate order would be reduced by a million dollars and there would be no forecast of 7.25 percent. I mean, either way the draft rate order would be reduced by 7.25 percent -- by a million dollars.

MR. VLAHOS: Thanks.

Mr. Buonaguro?

MR. BUONAGURO: Thank you for the opportunity to be clearer. Most of what I was saying about de minimus had to do with the difference in the various rates so the proposed 7.25 percent, and there's a real concern that 7.25 percent may not be the rate that actually gets put into in the instrument in October or November or December of this year. However, the impact change in the revenue requirement impact in 2009 relative to different 7.27, 6.5 doesn't change much what the actual impact is going to be. So what we're really talking about, as Mr. DeVellis has said a couple times, is the difference between an October date and a December 31st range of possibilities.

And a million dollars adjusted downwards for PILs, I don’t think, is necessarily material. I think we’re somewhere in between half a million dollars and $700,000, I think, would be the impact. That certainly is something that the Board should turn its mind to and consider, in terms of the principle about whether or not the company should be allowed to double-recover money which is being held under two separate notes for the same money, and extensively, as it was put forward in cross the reason is largely because the city, who holds the first note, doesn't want to be paid early because it wants the interest. Given the affiliate relationship, I don't think that's necessarily an appropriate basis on which to be holding money and paying interest when they could be paying it off.

Thank you.

MR. VLAHOS: Thank you, Mr. Buonaguro.

CLOSING ARGUMENT BY MR. DEVELLIS:

MR. DeVELLIS: Mr. Chairman, may I just address the settlement from the last proceedings? I didn't address that in my submissions earlier.

It was our understanding, I think if you read the settlement, and I think Mr. Seal said this this morning as well that Toronto Hydro had applied for a three-year cost-of-service application and the settlement agreement contemplated was addressing what would happen if the Board approved rates for 2010, how those rates would be updated, lest the cost of capital would be updated for 2010.

The Board did not order a cost-of-service rate for 2010 so that aspect of the settlement agreement that Mr. Warren referred you to I don't think applied. I think that's what Mr. Seal said this morning as well. So we'll be in IRM for 2010.

MR. VLAHOS: Mr. Warren.?

MR. WARREN: Mr. Chairman, at the risk of doing two unhappy things: One is to disagree with my friends behind me, and the second unhappy thing is to be fair to Toronto Hydro. In my respectful submission, a reduction of the million dollars would be premature. It seems to me the board in this, because we don't know what the deal is going to be. They may take out this financing on the 30th of December. They may take somebody at a New Year’s party and get their debt financing on the 30th of December, that’s possible. They may do it at 6.2 percent and they may do it for 10 years. We don't know those things. That's what the evidence was this morning.

So in my respectful submission, the appropriate thing for the Board to do is in this decision to say that as a matter of principle, ratepayers should not be responsible for anything other than the issuance of this debt at the very moment when the city has to be paid back and then Toronto Hydro has a direction in effect from the Board that it’s going to have to eat the difference if it issues it earlier, and if it issues it on unfavourable terms.

So in my respectful submission, there shouldn't be a $1 million reduction in it, you should approve the rate order if applied for and then when the prudence review the done, we all look at the actual numbers and, as painful as it may be for Mr. McLorg, he can explain the circumstances that obtained at the time and the rationale as to why they did what they did. Thank you, sir.

MR. VLAHOS: So leave – do not adjust rates for 2009 but upon review, parties will be able to submit to argue that any difference from December 31st to whatever date they happen to re-issue that debt, then that's open to argument, I guess, as to who should --

MR. WARREN: It's open to argument as to who should bear it and in an ideal world, in your decision, sir, you might say that you’re sceptical about their rights to recover that difference. But if you don't, it's still open to the parties to open that when we get to the actuals.

MR. VLAHOS: Thank you for that.

Mr. Millar.

CLOSING ARGUMENT BY MR. MILLAR:

MR. MILLAR: Yes, very briefly, Mr. Chair.

First to respond Mr. Warren's point. I think if you are going to adopt his proposal you probably need a variance or deferral account or something to keep track of that money -- because the money, of course, will be recovered and it will be very difficult to go back during the IRM proceeding or the rebasing in 2011 -- that money has already been collected, you have to be careful about the prohibition about retroactive recovery. So I would suspect we need a variance account or a deferral account of some type to track that money.

Again, very briefly on other issues. I think these have been largely covered by my friends. On the debt rate itself, the 7.25 percent, as I understand it, Toronto Hydro calculates what the long-term debt rate should be similar to the way that the Board does it. It is a long-term bond forecast plus a corporate spread plus five points admin costs.

The corporate spread they used to get to 7.25 was, I think, was 350, 350, I believe. Mr. Sardana I think acknowledged that if they were to look at those spreads today they would be slightly lower, perhaps 20 to 30 basis points lower. So the Board may consider that anyways while considering the reasonableness of the 7.25 percent.

The other issue, I think, was largely covered by Mr. DeVellis, it’s this business of the fact that arguably they are taking out the money, the $245 million debt instrument a little bit earlier than they need to.

We’ve seen the chart, J1.1, that shows the revenue requirements impacts based on different dates so to the extent the Board feels that this money is being taken out earlier than it has to, it may consider a reduction to the revenue requirements, I guess, up to a million dollars.

Subject to any questions you have, those are my submissions.

MR. VLAHOS: Thank you. No questions. I guess the panel is excused. I just need about 20 minutes to see if I can put some thoughts together.

Sorry. I'm sorry, Mr. Rodger. Do you have more to say?

ARGUMENT IN REPLY BY MR. RODGER:

MR. RODGER: Thank you, Mr. Chairman. Let me start on this addressing the long-term debt rate that my friends have talked about.

May 2008, this Board approved Toronto Hydro's rates for 2008 and 2009. As you've heard, all cost of capital issues were completely settled as between Toronto Hydro and the parties and that settlement agreement was approved by the Board

For the approved test year or for 2009, all parties agreed that the forecast cost of new long-term debt would be the approach using the Board's cost of capital guidelines.

One of my friends earlier said there is essentially nothing that needed to be approved. That would be contrary to this agreement, settlement agreement, because the party's already laid out and the Board confirmed this is the way we would go this year. We would use a forecast long-term debt rate.

It was also acknowledged from the settlement agreement on page 8 that this adjustment would be mechanistic, essentially the same as ROE would be updated, and that's what Toronto Hydro did, that's the evidence and that's how they wound up with the 7.25 long-term debt rate.

There was a question about there being no evidence for this, I think it was Mr. DeVellis that said no market evidence, but that's not true. The evidence is that Toronto Hydro conducted the forecast by using the Government of Canada long-term bond forecast rate and the corporate spread furnished by the bond market dealers, i.e., that is the marketplace plus they added carrying costs. So I suggest to you that you do have, as best as can be available, the evidence showing that this is the indicative market rate. And there has been no evidence led by any of my friends that this rate unreasonable or that Toronto Hydro has somehow made errors and omissions in arriving at the 7.25 percent long-term debt forecast. In fact, when you compare it with what the Board itself has come up with for 2009 cost-of-service applications, the Board's long-term debt was 7.62 percent. So if you want to some kind of a test, at least of what's before the Board, it's lower than the Board's own estimate.

Now, the settlement agreement also acknowledged that both the utility and ratepayers are protected in this process. That's what the parties agreed to, all parties agreed to. And Mr. Sardana's testimony was that this is achieved at the next cost-of-service hearing, where the actual contracted rate and other issues around the new debt will be considered. And you've heard that this will be in 2011.

And I do agree with Mr. DeVellis when he referred to page 8 of the settlement agreement, and his interpretation should be accepted over Mr. Warren's. If you go back to the top paragraph, this is the reference where it says:

"That is, the actual cost of embedded debt, subject to the Board guidelines, will be updated prior to the commencement of the next test year."

Then it goes on:

"If applicable -–"

If applicable:

"-- an adjustment will be made in 2010."

This isn't applicable because the Board didn't approve rates for 2010. As a matter of fact, if you go to the decision -- this is the May 15th, 2008 decision, and I'll just read from page 7, where it says:

"Accordingly, the Board will approve rates for 2008 and 2009 based on its consideration of the evidence filed with respect to each of these years. We anticipate that the rates for the subsequent year will be determined through the application of a formulaic adjustment using the then-Board approved methodology, 3rd generation IRM."

So you look at the language of the settlement agreement and the decision. It was clear that the provision that Mr. Warren is suggesting just is not applicable. The settlement agreement did not apply to that third year since it wasn't approved by the Board in that context.

Now, so in sum, the 6.25 percent forecast, it is reasonable. It should be accepted.

Now, my friends also mentioned about whether the idea of the 30-year debt, whether that was before the Board, whether that should approved or could be approved. But Mr. Sardana testified that the debt issue related to the second city note repayment in December 2009, being extended to 10 to 30 years, that was part of the last rates case. That was part of the evidence in that case and it was approved by this Board.

And Mr. Sardana gave other reasons why the long-term debt is required. He talked about matching asset life to liabilities, laddering of debt and so on; the same issues you hear from many utilities, both on the electricity side and the gas side.

So the bottom line is that that is a non-issue in our event. In any case, the 30-year term has already been settled and approved by the Board.

Now, there was also a question raised that some of my friends have spoken to, which essentially can be described as: Is there some kind of inherent re-opener in the debt rate if the contracted rate in the fall of this year is different from the 7.25 percent forecast that's before the Board today? And the Board should answer this question: Clearly, no.

The forecast amount is approved by you as being reasonable or not. If it's approved, then this rate is what the LDC can rely upon until its next rebasing application, and that's regardless of whether the actual contracted rate is higher or lower until you get to rebasing. And in any forward test year application, I would put to you, Mr. Chairman, the forecast of long-term debt is no different than any other cost the LDCs have to deal with. It forecasts fuel costs, transformer costs, distribution line costs, poles costs, et cetera.

And I think what my friends are essentially seeking today is that you introduce some kind of new true-up mechanism into the cost of capital guidelines prior to the next rebasing of Toronto Hydro in 2011. And this idea of a true-up is a concept that nowhere appears in the cost of capital guidelines, and there's no basis for it, in our submission. It would essentially be tantamount to re-opening an LDC's entire rate base.

As Mr. McLorg has testified, the intention of the guidelines, the reasons why the Energy Board put these guidelines out, is to provide assistance to utilities so it could plan its cases and provide some certainty about how we're going to proceed in this sector.

To introduce some kind of a true-up essentially creates a second-guess element which was never contemplated, would certainly produce uncertainty for LDCs which is not reasonable and is not consistent with the existing Board rate-setting practices. And I would suggest that the introduction of such a true-up mechanism, this is something that would be much bigger than just Toronto Hydro, but impact the whole LDC sector in Ontario, and it is just inappropriate.

There was also submissions made about the third IRM, and once again, we would suggest that there is simply no provision whatsoever to change the cost of capital in the 3rd generation IRM mechanism formula, and that we would request that you clarify and confirm this in your decision.

So the bottom line for us, Mr. Chairman, is that if the Board approves the 7.25 percent long-term debt for 2009, this will automatically be in place for the 2009 and the 2010 3rd Generation IRM rate years, and the matter will only be revisited at Toronto's 2011 rebasing application.

I would also underscore, sir, when Mr. Buonaguro talked about is there any need to deal with this debt issue now, just to reiterate Mr. Sardana's point that the utility doesn't have a choice. This is part of the amended and restated note that was, once again, approved by the Board. And I would suggest that it doesn't -- it wouldn't make any difference in terms of the carrying costs whether this note is held by an affiliate or whether it was entirely an arm's-length third party note.

If that was the requirement, Mr. Sardana's rationale for going to the market before December 31st is still valid, and we would submit that you would just judge that if there are any carrying costs, it's a reasonable business expense.

Now, my friends did not talk about the other two parts of this case, the other two applications. This has to do with the clearing of the customer credits and the disposal of the deferral account matters.

I would just say briefly there that these should all be accepted by the Board. We have followed the decisions and guidelines of this Board in terms of deferral and variance accounts. We followed the Accounting Procedures Handbook. The information before you reflects the most up-to-date audited balances. And there is no good reason, we submit, that these matters be continued to be held, and we would like them refunded to customers, particularly with respect to the expired rate rider revenues.

You've heard evidence that the combined credit totals are about 7.7 million. This is a very large credit owed to consumers, and as you've done in other cases where there are large balances, the Board has tended to clear those, and we think those are justified in this case.

Likewise with the smart meter accounts, there will be a net return to customers of some 744,000. The May 1st implementation date is appropriate, and once again, we want to return this amount to consumers.

So at the end of the day, Mr. Chairman, we're – we believe that what is before the Board is going to result in very modest rate impact. There's no rate mitigation necessary.

The approach we're taking to the long-term debt is what we've agreed to and the approach has been reasonable. The combined impacts, as we've said, are about $1.11, or 1 percent on the average residential 1000-kilowatt hour per month bill. And for all these reasons, we request that you grant the relief we seek on all three applications.

And those are all respectful submissions.

MR. VLAHOS: Thank you, Mr. Rodger. Just one area. I've noted you said the 30-years provision that is included in this application –

MR. RODGER: Yes, sir.

MR. VLAHOS: -- was settled and approved. That's what I noted down.

MR. RODGER: I would say approved by the board. I don't believe it was ––

MR. VLAHOS: Approved where?

MR. RODGER: In the –– well, it was part of the evidence before the Board, and ––

MR. VLAHOS: Well, it was part of the company's evidence.

MR. RODGER: Yes, and I --

MR. VLAHOS: Where did the Board pronounce on it?

MR. RODGER: Just for the record, it was – the notification that the company was taking this approach is on Exhibit E1, Tab 1, schedule 1, page 204. And just to give you one sentence reference, as it states:

> "The term of the debt issue related to the second city note repayment in December 2009 has been extended from 10 years to 30 years."

And I don't believe there is anything in the decision that would give rise that there was a concern at all expressed to that. So in our view, it was part of the evidence, people had an opportunity to comment on it and there is nothing in the decision that would say that that was not accepted. I think the issue Mr. Warren was raising was where did this come from. Was the utility putting forward this for the first time now, and our point is, no, this was part of our last re-basing application.

MR. VLAHOS: Mr. Rodger, I'm just a little concerned about the assumption that you are working with. The company files 10,000 pages. Just because the Board, or intervenors at the Board does not addressing every word of it, means that -- it was pre-filed therefore -- the Board didn't say anything, and therefore it is approved. I'm a little concerned about that line of it.

MR. RODGER: Fair enough.

MR. VLAHOS: Mr. Buonaguro? Don't re-argue this.

MR. BUONAGURO: I was just looking, he mentioned the evidence reference I was looking through the reference to 30 years. I just noted that the second city note repayment in the evidence was for 10 years. It was suggested they might be doing it for 10 years, not 30 years.

It also says the first note was for 30 years and I think they ended up doing 10 years, so it's not as clear-cut as it might seem.

MR. VLAHOS: Okay. The panel is excused. Many thanks. Can we take 10 minutes, please.

--- Recess taken at 2:55 p.m.

--- On resuming at 3:10 p.m.

MR. VLAHOS: The good news is that there is no dissenting in this opinion.

DECISION:

MR. VLAHOS: On December 2nd, 2008, Toronto Hydro filed an application for authorization for two things: first, to dispose of amounts, both positive and negative, derived from the continued existence of rate ride that were to have expired on April 30th, 2008, but which were continued until July 31st, 2008; and two, to implement the resulting adjustments by way of rate riders effective for the 2009 rate year over a 12-month period commencing May 1st, 2009.

The following rate riders were to have expired on April 30th, 2008, but which were continued until July 31st, as I mentioned, and this was done by Board authorization:

A, 2006 lost revenue adjustment mechanism, six-month rate rider; B, 2006 shared services mechanism, six-month rate rider; C, 2006 smart meter six-month rate rider; and D, regulatory assets recovery account rate rider.

That is the first application that the Board dealt with today.

The second application relates to the filing by Toronto Hydro on March 2nd, 2009. It was an application for disposition for two things. First: disposition of the 2007 year-end balances or balance in this smart meter deferral account together with a residential balance in the 2006 smart meter deferral account, totalling a net credit to customers of $743,500; and second, approval of smart meter rate rider values for 2009 to take effect May 1st, 2009.

The third application that was heard today relates to a request filed on March 16th, 2009, where Toronto Hydro filed an application to reflect in rates effective, again, May 1st, 2009, updated cost of capital values as it was required to do pursuant to the Board's May 15th, 2008, decision, which decision dealt with two test years, 2008 and 2009.

The draft rate order that was filed by Toronto Hydro as part of its pre-filed evidence also included the additional tariff sheets that relate to the first two applications that I noted earlier.

The Board had determined that it will combine those three applications to one, which was pursuant to subsection 21(5) of the Ontario Energy Board Act.

For purpose of this proceeding, the Board also adopted the list of intervenors that were approved in the most recent Toronto Hydro main rates proceeding noted earlier, which was for rates for 2008 and 2009. The file number on that was EB-2007-0680.

The Board proceeded by way of an oral hearing which was the purpose of today and allowed a process for interrogatories; which Board Staff, I believe, were the only party that did ask IRs which were responded by the applicant.

Having heard the evidence and the arguments by parties, there are two things here that I need to pronounce on. One is the cost rate itself of the debt instrument, and secondly, the timing of that debt instrument. So I will do so, and I may also comment along the way on some of the things that have come up, if not as findings, but at least as commentary that may be of assistance to the parties going forward.

The starting with the cost rate itself, the proposed rate is 7.25 percent and it is based on a 30-year term. We heard -- the Board heard argument today about the reasonableness of that cost rate. There was some discussion whether the 10-year term would have produced a lower rate or not, but this item was not pursued by intervenors in their arguments.

It also assisted the Board with the witnesses clarifying their position, which is now acceptance of the notion, or the principle, that whatever the Board may approve by way of forecast cost of debt, there will be an opportunity in the next cost-of-service review when the actual rate itself is brought forward, the contracted rate, for the parties to consider that rate, the reason for that rate and it would be open to the intervenors to argue accordingly.

So with that understanding, that there will be an opportunity, and that opportunity was agreed to by all, that it will be the 2011 cost-of-service review proceeding, the Board will accept the 7.25 percent proposed forecast rate on two grounds: one, that it is not inconsistent with the settlement proposal reached by the parties that the company shall present a forecast rate; and two, the rate itself, the level of the rate is below the Board's own values that have been announced.

I turn to one argument, by CCC specifically. It is my conclusion that what the company proposes is not inconsistent with the settlement proposal.

It is also my view that the IRM process, if that's was being contemplated as being the home for this review, this prudence review of the debt rate, the IRM process was not intended for that purpose. That's not to say that someone cannot argue differently before another panel when that time arrives, and this is just by way of commentary.

Now, we've come to the second issue, and that is the timing of the debt instrument. The utility’s proposal or its draft rate order reflects a revenue requirement which reflects an October 1st proposed date. However, the money to be paid to its parent it's not due until December 31st, 2009.

Therefore, there is a time where the -- based on the company's proposal, where there will be monies raised with those monies not finding a home for three months. The result of that is there is some impact on the revenue requirement that is effected in the submitted draft rate order. The issue is what to do -- what should the Board do with that difference in the revenue requirements.

There were various suggestions from decreasing the revenue requirement, that is directing the company to prepare another rate order to reflect a decrease up to a million dollars or the company simply to make its case the next time and be prepared to refund some of those monies, up to a million dollars, to its customers and then counsel to Board Staff noted you can't do that unless you have a deferral account, a variance account; a fair point.

My conclusion is that it would be a lot cleaner and more principled, if the draft rate order were to be revised to reflect a reduction in the revenue requirement for the 2009 year, because of the time consideration between October 1st and December 31st.

The issue, is to what would be a reasonable number of days prior to December 31st, and I heard the witnesses today, when asked about mid-December, whether that is reasonable, and the answer was it's doable.

I wasn't sure whether we have the precise amount, that I can say: The revenue requirement shall be reduced by X amount or by an amount that would correspond from October 1st to December 15th. I don't want to complicate the world. It's a bit of a half-decision, because I may want to just canvass this a bit more, Mr. Rodger.

Do we have an amount on record, Mr. Millar, for December 15th?

MR. MILLAR: We don't for December 15th. We have December 1st and December 31st. I'm not sure if it's as simple as splitting the difference, but maybe Mr. Sardana can comment.

MR. SARDANA: Well, if it assists, we can certainly provide that number. Obviously, you know, I'd need a few minutes to go back to my spreadsheet, and Mr. Seal and I can do that.

MR. VLAHOS: Okay, then as I said, there are two ways of doing it, so I'm going to pick the one that the Board will require the company to amend its draft rate order to reflect an effective date or an issuance date of December 15th.

MR. SARDANA: Fair enough.

MR. VLAHOS: Okay. Otherwise, the Board does accept the cost consequences of this application; all three applications, except as noted.

That completes the Board's ruling. Any questions?

MR. RODGER: So, just to be clear, Mr. Chairman, in terms of next steps, we would -- the rate order has now been accepted with this one change. We'll make this one change, presumably over the next couple of days. Just reissue the finalized rate order and then that's then complete for ––

MR. VLAHOS: Yes, Mr. Rodger. I understand that he has to go to all the parties, and I'm not the authority on this but I understand it has to be communicated to all the parties, and I guess we do have a number of days. But Mr. Millar, maybe I'm speaking out of turn.

MR. MILLAR: Yes, Mr. Chair, if I may, I think what Mr. Rodger proposes is quite right. They would make this small adjustment and refile, hopefully within the next few days. Is that possible, Mr. Rodger?

MR. RODGER: I guess what I'm concerned about is what is the drop-dead date for Toronto Hydro in order to implement for May 1st. When do you need the final approved rate order after the intervenors' submissions, et cetera?

MR. SARDANA: Yes, well, so we're at April the 3rd right now. I'm looking towards the back of the room. You know, the -- if we can get everything implemented so that we can engage our billing system folks by no later than the third week of April, because they have got to prepare the new bills do the testing, et cetera.

So I don't have a calendar handy, but -- I don't know if you do, Mr. Rodger?

MR. RODGER: So the latest -- Thursday the 16th of April or Friday the 17th of April?

MR. SARDANA: I think that's workable for us. I'm looking to Mr. Seal in the back of the room.

MR. VLAHOS: Well, let's see. Let's start working backwards and walk forward.

MR. SARDANA: Yes.

MR. VLAHOS: I mean it takes you no more than two days to refile the draft rate order.

MR. SARDANA: Correct.

MR. VLAHOS: Right?

MR. SARDANA: Yes.

MR. VLAHOS: So this will reach the intervenors within two or three days.

MR. SARDANA: Yes.

MR. VLAHOS: So I suspect the intervenors, all they need to do is just look at the different rate schedule that is attached to it as compared to the previous. So there are no other textual compendiums it to.

MR. SARDANA: That's correct. Yes.

MR. VLAHOS: So I suspect that if we, Mr. Millar, if we give the intervenors three or four days?

MR. MILLAR: What I might suggest, Mr. Chair, is the new rate order, the new rate order filed by Tuesday the 7th and then -- without having spoken with my friends -- perhaps comments by that Friday, the 10th, end of the day.

MR. SARDANA: That's Good Friday.

MR. MILLAR: Oh, that's Good Friday.

MR. SARDANA: Thursday the 9th?

MR. MILLAR: I don't know if Thursday the 9th is possible. We can do it at our end –

MR. SARDANA: The voice of dissent now is coming.

Mr. Seal's staff are the ones who have to run all the numbers, so I'll let him speak.

MR. SEAL: Yes, it's ––

MR. VLAHOS: By the way, you don't have to bill customers. You just give them a break for a week, you know.

[Laughter]

MR. SEAL: It's not a really simple process in re-running all the numbers through to the rates. It's probably a three- or four-day exercise in total to get us right through to the rates, because we have to re-run our whole cost-of-service to get the new revenue requirements, make revenue cost ratios, makes sure it all flows through the rates.

MR. VLAHOS: So Mr. Millar, I'm in your hands as in terms of the dates. As I said --

MR. SARDANA: Yes, Mr. Vlahos, if I could, Mr. Millar, the 9th of April would work for us.

MR. MILLAR: Which is Thursday?

MR. SARDANA: Which is Thursday before Good Friday.

MR. MILLAR: And if we had -- if intervenor comments were due by the Tuesday?

MR. VLAHOS: There seems to be agreement.

MR. MILLAR: Then let's say Tuesday the 14th and then hopefully the Board could issue a decision, an ultimate decision shortly after that date.

MR. VLAHOS: Yes, it's a question of once we receive the document, then we'll be busy on checking the document and waiting for comments from the intervenors, if any, and then it's just a question of a day or so after that.

There's no other -- it will be just a simple order attaching the revised rate schedules.

MR. SEAL: I just -- sorry, if I may, Mr. Chairman?

MR. VLAHOS: Yes.

MR. SEAL: I just do want to caution parties to not expect to see a huge impact on rates. We're talking a million dollars out of $500 million here, so that's all.

MR. VLAHOS: No, we are all for principle.

So the only other thing, I guess, cost awards. And Mr. Warren, I was reminded when he finished his argument. So we'll follow the normal process, which is intervenors will file the cost statements and I don't know exactly what the dates -- let's say 10 days. Is that adequate? Ten days --

MR. SCHUCH: Mr. Chair, this has been laid out in the procedural order.

MR. VLAHOS: Oh, it has? Oh, well, then. Okay.

Just for the record, then, it's -- parties that were eligible for costs in -- in the previous proceeding shall submit any claims for costs within 10 days from the Board's rate order. The company may file with the Board and forward to the affected parties any objections to the claimed costs within 15 days of the day of the Board's rate order, and any affected parties may file with the Board and forward to the company a response to any objections for past claims within 20 days of the date of the Board's rate order.

So does that complete the day? Thank you very much, all. Thank you, reporter.

--- Whereupon the hearing concluded at 3:29 p.m.