



ONTARIO ENERGY BOARD

FILE NO.: EB-2011-0011

VOLUME: 3

DATE: May 3, 2011

BEFORE:	Marika Hare	Presiding Member
	Paul Sommerville	Member
	Karen Taylor	Member

THE ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application by Toronto
Hydro-Electric System Ltd. for an Order or Orders
granting approval of initiatives and amounts
related to the Conservation and Demand Management
Code.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Tuesday, May 3rd, 2011,
commencing at 9:42 a.m.

VOLUME 3

BEFORE:

MARIKA HARE	Presiding Member
PAUL SOMMERVILLE	Member
KAREN TAYLOR	Member

A P P E A R A N C E S

MICHAEL MILLAR	Board Counsel
JOSH WASYLYK	Board Staff
VIIVE SAWLER	
MARK RODGER	Toronto Hydro-Electric System
JOHN VELLONE	Limited
GEORGE VEGH	Ontario Power Authority
DAVID CROCKER	Association of Major Power
SHELLEY GRICE	Consumers of Ontario (AMPCO)
ROBERT WARREN	Consumers Council of Canada
JULIE GIRVAN	(CCC)
DAVID MacINTOSH	Energy Probe Research Foundation
OLENA LOSKUTOVA	
MARK RUBENSTEIN	School Energy Coalition (SEC)
MICHAEL BUONAGURO	Vulnerable Energy Consumers
	Coalition (VECC)
MATT GARDNER	Low Income Energy Network (LIEN)
JUDY SIMON	

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1 Tuesday, May 3, 2011

2 --- On commencing at 9:42 a.m.

3 MS. HARE: Please be seated. Good morning. We are
4 continuing today with our second panel, and I think it is
5 Board Staff that is up next. Mr. Millar.

6 MR. MILLAR: Yes. Thank you, Madam Chair. I think
7 Mr. Rodger had a brief preliminary matter. Maybe it would
8 be suitable to hear that first.

9 **PRELIMINARY MATTERS:**

10 MR. RODGER: Thank you, Madam Chair. It appears,
11 Madam Chair, that we will conclude today, and just thinking
12 about a schedule for argument, what we would propose for
13 the Board and parties' consideration is that we file
14 written in-chief argument on Monday, May 9th, and then have
15 intervenors file their argument on Tuesday, May 24th, and
16 then we would file reply six days later on June 1st, if
17 that suits the Board.

18 MS. HARE: I think that is fine. That schedule is
19 appropriate. Thank you.

20 MR. RODGER: Thank you, Madam Chair.

21 MS. HARE: Okay, Mr. Millar.

22 **TORONTO HYDRO-ELECTRIC SYSTEM LIMITED - PANEL 2,**
23 **RESUMED**

24 **Michael Marchant, Previously Sworn**

25 **Tony Pardal, Previously Sworn**

26 **Chris Tyrrell, Previously Sworn**

27 **CROSS-EXAMINATION BY MR. MILLAR:**

28 MR. MILLAR: Thank you. Good morning, panel. My name

1 is Michael Millar. I am counsel for Board Staff.

2 I would like to start with a housekeeping issue. I
3 asked a question of panel number 1 about Board Staff
4 Interrogatory No. 7, if you could pull that up, please?

5 I was asking panel 1, if you looked at page 4 of that
6 response, without reading the entire thing, the budget for
7 staff is about 2.7 million, 27 person years, and I asked
8 Mr. Tyrrell to confirm that works out to about \$100,000 per
9 employee per year.

10 I asked if he was able to provide a breakdown of those
11 salaries, and there are the nine positions listed in the
12 chart above that response, and he directed me to this
13 panel. So I am wondering if you can help me with that,
14 whether by way of undertaking or if you actually have
15 information on that.

16 MR. PARDAL: We don't have the actual breakdown of
17 salary by individual position.

18 These positions are contract positions, and what we've
19 done is applied an average salary or cost per contract
20 consultant. That works, based on the experience to date,
21 to an average of \$100,000 per individual, and that is a
22 fully-loaded burden rate.

23 MR. MILLAR: Okay. So you don't have a forecast of
24 the individual costs for any of these nine positions?

25 MR. PARDAL: Not for the individual positions, because
26 they are looking to the future. We have not hired these
27 contract positions, but based on the experience that we
28 have had in the past, it works out to an average of about

1 \$100,000 per position on a fully-loaded burden rate.

2 MR. MILLAR: Okay. Well, I have your answer. Thank
3 you.

4 I have some questions about some of the individual
5 programs. Perhaps we can start with some questions about
6 the flat-rate water heater conversion project.

7 Before I get into the detailed questions, I just want
8 to make sure I understand the program. And from my reading
9 of the summary, my understanding is that this program has
10 two elements to it. The first is a switch from an
11 unmetered water heater to a metered water heater, and the
12 second part of the program is attaching what I will call a
13 peaksaver-type switch to that new metered hot water heater.
14 Have I got that right?

15 MR. MARCHANT: Correct.

16 MR. MILLAR: I have produced copies for your counsel,
17 and hopefully he has shown them to you or he can now, and I
18 will give copies to the Panel and the parties. We have an
19 FAQ from Toronto Hydro's website which deals with this
20 unmetered water heater service.

21 And assuming there are no objections, I will call that
22 Exhibit K3.1. It is the Toronto Hydro unmetered water
23 heater FAQ.

24 **EXHIBIT NO. K3.1: COPY OF UNMETERED WATER HEATER**
25 **SERVICE FAQ FROM THESL WEBSITE.**

26 MR. MILLAR: Do you have that document in front of
27 you?

28 MR. MARCHANT: Yes.

1 MR. MILLAR: Witness panel, do you have that?

2 MR. MARCHANT: Yes.

3 MR. MILLAR: Are you familiar with that document?

4 MR. TYRRELL: Sorry, I was not.

5 MR. MILLAR: Okay. It is something that we pulled off
6 your website. Do you accept that it is from the Toronto
7 Hydro website?

8 MR. TYRRELL: Yes.

9 MR. MILLAR: And I only really want to take you
10 directly to one part, and that is page 5 of 5.

11 Just to provide the context, the previous FAQ
12 questions deal with how -- the mechanics of switching out
13 your water heater, but the last question in the FAQ is, "Do
14 I have to take action now?" And the response is:

15 "If you have not already, you will receive a
16 letter from Toronto Hydro indicating that we are
17 no longer offering the flat rate. Included in
18 this personalized letter, Toronto Hydro will
19 indicate the date in which you must complete your
20 conversion."

21 Do you see that?

22 MR. TYRRELL: Yes, we do.

23 MR. MILLAR: So is it accurate to say that Toronto
24 Hydro is discontinuing the flat-rate program?

25 MR. TYRRELL: That is -- I believe that is our
26 strategy. Over time, as we migrate people into the metered
27 units, we will make a determination as to when to terminate
28 the program.

1 MR. MILLAR: Is it up to Toronto Hydro when to
2 terminate the program?

3 MR. TYRRELL: I don't know the procedure or the
4 process that we've been going to, because I have been kind
5 of new to this file, but I would assume that this strategy
6 would include some communication to the Board Staff to
7 determine when and, you know, what time this would be
8 terminated.

9 MR. MILLAR: I want to be clear. I am not necessarily
10 asking directly about the program that you presented. I
11 want to know if Toronto Hydro can unilaterally cease
12 offering the flat metered rate for water heaters. Do you
13 know the answer to that?

14 MR. TYRRELL: I don't know the answer to that.

15 MR. MILLAR: Could I ask you to take an undertaking to
16 find out?

17 MR. TYRRELL: Certainly.

18 MR. MILLAR: That will be undertaking J3.1.

19 **UNDERTAKING NO. J3.1: TO PROVIDE RESPONSE AS TO**
20 **WHETHER TORONTO HYDRO CAN UNILATERALLY CEASE OFFERING**
21 **THE FLAT METERED RATE FOR WATER HEATERS.**

22 MR. MILLAR: You've done as part of your analysis that
23 is filed with the program description the TRC and the PAC
24 analysis; is that correct?

25 MR. PARDAL: Yes.

26 MR. MILLAR: I'm sorry, I think someone's mic may be
27 off.

28 MR. PARDAL: Yes.

1 MR. MILLAR: And I believe the figures are 1.3 for
2 both of those programs?

3 MR. PARDAL: The flat-rate water heater?

4 MR. MILLAR: Yes.

5 MR. PARDAL: The TRC is 1.9 and 1.7 -- 1.9 for the TRC
6 and 1.7 for the PAC.

7 MR. MILLAR: My apologies. I'm glad you looked it up.

8 Now, I assume that you did these calculations -- you
9 ran the numbers on this, including both the switch to the
10 metered heater and the peaksaver addition; is that correct?
11 It is the whole program?

12 MR. PARDAL: It's the whole program, so it is
13 incremental. So you take into account incremental costs
14 associated with the program minus the benefits, which are
15 to do with the avoided cost.

16 MR. MILLAR: Did you run the numbers for the addition
17 of the peaksaver switch only; in other words, not including
18 the switch from unmetered to metered?

19 MR. PARDAL: We ran it both ways. We felt that it was
20 appropriate, since adding a peaksaver switch was in fact
21 part of the overall economic analysis of this program to
22 determine the benefits.

23 That resulted in a TRC of 1.9 and 1.7, but, as I said,
24 we also reran the numbers without the peaksaver benefits
25 and costs associated with it, and it resulted in TRCs and
26 PACs very similar to the first. And, in fact, without the
27 peaksaver, the TRC was at 1.8 versus 1.9, and for the PAC
28 test was 1.7, identical to the first.

1 MR. MILLAR: Did you run it the other way, just the
2 peaksaver element without the conversion from unmetered to
3 metered?

4 MR. PARDAL: No, we didn't run a separate TRC analysis
5 or PAC analysis for peaksaver on its own. peaksaver is a
6 provincial -- province-wide program, and, as such, shows
7 TRCs are done on a province-wide basis by the Ontario Power
8 Authority.

9 MR. MILLAR: Forgive me that I don't know this, but my
10 understanding of the provincial peaksaver program was that
11 it typically applies to air conditioners, is that right, or
12 can it be installed on any device?

13 MR. PARDAL: It can be applied to any device. The
14 biggest, obviously, benefit associated with peaksaver would
15 be the air conditioner, but it can be applied to other
16 devices, water heaters, et cetera.

17 MR. MILLAR: So to the best of your knowledge, the
18 provincial peaksaver program could encompass putting
19 peaksaver-type devices on water heaters?

20 MR. PARDAL: Yes.

21 MR. MILLAR: Okay. I want to be fair to the parties,
22 so I am going to put this question directly to you.

23 We don't have the answer to Undertaking J3.1 yet,
24 obviously, but I don't think it would be a stretch to
25 suggest that if parties felt Toronto Hydro could
26 unilaterally impose this switch from unmetered to metered,
27 that you shouldn't be paying parties to do that.

28 What would your response be to that?

1 MR. PARDAL: I'm sorry, could you repeat the question?

2 MR. MILLAR: Well, it seems a possibility - at least
3 from this FAQ, and we will wait for the response to J3.1 -
4 but it seems to be a possibility that Toronto Hydro can
5 simply force people to switch from unmetered to metered hot
6 water heaters.

7 If that is the case, is there any reason that we
8 should be paying incentives for people to do that through a
9 program like this?

10 MR. TYRRELL: I think we would need to get the answer
11 on 3 -- the undertaking of 3.1 before I can really truly
12 answer that question.

13 I really don't know if we have a legal obligation to
14 actually terminate the program, and then what happens to
15 the stranded water heater customers that have not
16 converted.

17 I know that there is a process that we've been
18 suggesting to these consumers as a series of letters that
19 ultimately lead to a process where they would be
20 disconnected; the lead wire to those customers that bypass
21 the meter would be ultimately disconnected.

22 And so I just need to get some counsel on that. I
23 will take the undertaking, but...

24 MR. MILLAR: Well, the problem I will face, of course,
25 is by the time you file the undertaking, this hearing will
26 probably be over. So I very likely won't have a chance to
27 ask you this question.

28 That said, I can't make you answer anything more than

1 you have.

2 I will suggest to you that I suspect some parties
3 would think that this program is not a good idea, if you
4 don't have to pay people to do this, that you shouldn't be.

5 But maybe that is a matter for argument, and not
6 something we can discuss further here.

7 Still on this program, you've estimated a 30 percent
8 free ridership rate; is that correct?

9 MR. MARCHANT: Correct.

10 MR. MILLAR: And I just want to be clear what that is.
11 I know that you're working people off of these unmetered
12 hot water heaters in any event.

13 The 30 percent free riders, are these people you think
14 would have switched out their meter irrespective of this
15 program? Is that what that number is meant to reflect?

16 MR. MARCHANT: Yes. That is basically a default
17 assumption, that 30 percent of the people would have done
18 something with those water tanks.

19 MR. MILLAR: Now, I heard you say yesterday that you
20 had more or less reached the -- I won't put words in your
21 mouth, but something like the saturation point with this
22 program, and that absent additional incentives you weren't
23 getting anybody switching out these meters.

24 Did I hear that correctly?

25 MR. MARCHANT: Well, the rate has definitely declined
26 in terms of marketing. It is in one of the IRs.

27 It is actually Board Staff IR 52, where it lists the
28 rates on the second page.

1 MR. MILLAR: Okay.

2 MR. MARCHANT: Third page? Sorry, one more page.

3 So that lists the decline from 2008 to 11,000, and
4 then 2010 it has dropped to 2,400.

5 MR. MILLAR: So with that in mind, are you still
6 comfortable with the 30 percent free ridership number?

7 MR. MARCHANT: Well, if you look at the -- if you
8 extrapolate the declining rate, the estimated number of
9 tanks would be well within the 30 percent free ridership
10 rate.

11 MR. MILLAR: Does your analysis -- getting to
12 30 percent, does that take into account that apparently the
13 flat water heater program is being discontinued anyway?

14 MR. MARCHANT: No. It assumes status quo.

15 MR. MILLAR: Now, on that point, I think it was Mr.
16 Tyrrell mentioned that there were a series of letters being
17 sent out to people who currently have these unmetered
18 heaters. Would you be able to provide us copies of those?
19 Are these set letters that Toronto Hydro sends out?

20 MR. TYRRELL: Yes.

21 MR. MILLAR: So Undertaking J3.2, that is to provide
22 copies of any letters sent by Toronto Hydro to people who
23 have unmetered hot water heaters, with respect to the
24 discontinuation of that program.

25 **UNDERTAKING NO. J3.2: TO PROVIDE COPIES OF ANY**
26 **LETTERS SENT BY TORONTO HYDRO TO PEOPLE WHO HAVE**
27 **UNMETERED HOT WATER HEATERS, WITH RESPECT TO THE**
28 **DISCONTINUATION OF THAT PROGRAM.**

1 MR. MILLAR: Thank you for that.

2 A final question on this program. I would like to
3 follow up very quickly on some questions Mr. Crocker asked
4 you.

5 Madam Chair, again I appreciate that there are -- that
6 the Issues List placed certain restrictions on this
7 hearing, so if anybody thinks I am crossing the line,
8 please let me know. But this will be a short series of
9 questions.

10 I don't think you have to turn it up, but around page
11 163, I believe, of the transcript, Mr. Crocker was asking
12 you about this program and whether you considered changes
13 to the program whereby they would switch out their electric
14 heater -- hot water heater with a gas hot water heater. Do
15 you recall that?

16 MR. TYRRELL: Yes, I do.

17 MR. MILLAR: And you responded to that, if I could
18 just summarize, essentially that you weren't proposing
19 that. That that was a fuel-switching initiative, and you
20 weren't proposing that as part of this program; is that
21 fair?

22 MR. TYRRELL: That's correct.

23 MR. MILLAR: It's true, however -- I don't know if you
24 have a copy of the directive -- but the directive does
25 include a fuel-switching within the definition of CDM; is
26 that fair?

27 MR. TYRRELL: That's fair.

28 MR. MILLAR: Okay. But I guess for whatever reason,

1 you determined you weren't going to pursue that option?

2 MR. TYRRELL: Well, most of the electric water heater,
3 you know, customers don't necessarily have access to gas,
4 and if the only appliance in the house is, in fact -- it's
5 all electric and they have to bring gas into their house
6 just for an electric water heater, typically that is at a
7 very high cost.

8 So my response to it was it is really a customer
9 choice, and really it is based on the fact that -- what
10 is -- what is the cost of -- associated with converting
11 these to natural gas?

12 It is not that we would discourage it. It is an
13 option to the consumer, and certainly we would provide it
14 as an option to the consumer if that is what they choose,
15 not to actually convert the meter. But the fact is they
16 technically may not be able to do it.

17 Then there is, you know, requirements of venting
18 natural gas water heaters, as well. Plus what we found is
19 a lot of these water heaters are located in spaces that
20 can't be vented, can't get gas to it, or they're just in
21 crawlspaces or areas that are restricting, that would
22 technically not allow these customers to convert to natural
23 gas.

24 MR. MILLAR: You mentioned that you provide them with
25 that option, the option of switching to natural gas.

26 Could you elaborate on that, please?

27 MR. TYRRELL: Any time the customer asks, you know:
28 What are my options, we typically, as part of our routine

1 discussion, and it would just be more verbal and not
2 written, that there is an option to go to gas if gas is
3 available to you.

4 We don't create this, you know, marketing campaign to
5 go to gas, but we don't discourage the opportunity to go to
6 gas, if gas is available to the customer and if it makes
7 economic sense to them.

8 MR. MILLAR: Okay. Final question on this. In the
9 city of Toronto, most people would have access to natural
10 gas; is that fair?

11 MR. TYRRELL: That is not true. Actually, when we
12 were doing a survey of, you know -- we actually, as an
13 energy services company, owned all of the water heaters
14 under Toronto Hydro Energy Services, and we did a survey or
15 an evaluation of the 86,000 tanks that had gas available to
16 them. And it surprisingly wasn't as, you know, widely
17 distributed to these specific customers as we thought.

18 We did offer a natural gas tank option as a rental to
19 customers, but we did not essentially have a lot of uptake
20 in that area.

21 MR. MILLAR: Thank you. I have some questions about
22 the MURB DR program. You might want to turn up Board Staff
23 Interrogatory 84.

24 Maybe I will just start with a quick little bit of
25 background on this program.

26 In its simplest terms, I suppose this program is an
27 effort to bring peaksaver-type devices to condo buildings,
28 multi-unit residential buildings; is that a fair summary?

1 MR. MARCHANT: Yes, that's correct.

2 MR. MILLAR: And just a question about how this works.
3 I am not expert in this, so correct me if I am wrong.

4 I understand there are a couple of possible metering
5 configurations for multi-unit residential buildings. There
6 is what is called unit smart meeting and unit sub-metering.

7 And my understanding is under one of those
8 configurations, Toronto Hydro directly meters all of the
9 individual units in the building.

10 In the other configuration, Toronto Hydro meters to a
11 bulk meter, and then behind that meter the units are sub-
12 metered but not by Toronto-Hydro; is that right?

13 MR. MARCHANT: Then there is -- that's correct, and
14 there is also just bulk-metered condominiums that don't
15 have suite metering as well.

16 MR. MILLAR: Okay. Of those three configurations,
17 which would this program be available to? Obviously not
18 the third one, where there aren't individual...

19 MR. MARCHANT: It is actually applicable to all three.
20 The impacts are actually at the central plant, which
21 impacts the use for the whole building. It doesn't impact
22 the suite use.

23 So there has to be a mechanism of distributing the
24 incentives to the suite owners.

25 MR. MILLAR: Okay. Just to be clear, your proposed
26 program, any multi-unit residential building would be
27 eligible for that?

28 MR. MARCHANT: Provided it is a central cooling plant

1 or heat pumps.

2 MR. MILLAR: So the meter configuration is irrelevant?

3 MR. MARCHANT: Yes.

4 MR. MILLAR: Thank you. Now, you state at IR No. 84 -
5 I guess we're repeating back to you something from your
6 evidence - that you are expecting a 40 percent
7 participation rate for the individual suites and each
8 participating condominium; is that right?

9 MR. MARCHANT: It is actually -- the 40 percent is the
10 threshold by which a building can participate if they're
11 extending it out to the suites. The cost of setting up a
12 wireless infrastructure in each building, if they can't get
13 40 percent of the suites to participate, it is likely not
14 worth pursuing.

15 MR. MILLAR: So that is an eligibility requirement for
16 the program?

17 MR. MARCHANT: Correct.

18 MR. MILLAR: In other words, if they can't get
19 40 percent of the units to sign up for this, you won't do
20 it?

21 MR. MARCHANT: Or there is also the other option,
22 which is -- which is providing about 30 kilowatts of common
23 area load.

24 MR. MILLAR: Could you elaborate on that, please?

25 MR. MARCHANT: Well, there is opportunities in the
26 building to control both suite loads and there is also
27 common area loads.

28 So your corridor ventilation fans or recreation centre

1 units, or that sort of thing, could also be controlled
2 through the program.

3 MR. MILLAR: Is there a threshold for that element?

4 MR. MARCHANT: That's the 30 kilowatts.

5 MR. MILLAR: That's 30 kilowatts, okay. But absent
6 hitting those thresholds, you wouldn't do the program,
7 then; is that correct?

8 MR. MARCHANT: Correct.

9 MR. MILLAR: The reason being it wouldn't make
10 economic sense, to put it bluntly?

11 MR. MARCHANT: Yes. You have to install a wireless
12 infrastructure in these buildings. So if we had, say,
13 5 percent of the suites sign up or no common area load, it
14 wouldn't be effective.

15 MR. MILLAR: Okay, thank you.

16 Quickly, some questions about the hydronic program.
17 Some of these questions I may have to pose to the OPA in a
18 moment, but I think it would be fair to run them by you
19 first.

20 You are familiar, of course, with the OPA's letter of
21 April 21st?

22 MR. MARCHANT: Yes.

23 MR. MILLAR: Do you have a copy of that handy?

24 MR. MARCHANT: Yes.

25 MR. MILLAR: And I just want to get a better handle on
26 the differences between what would be offered through this
27 Toronto Hydro program and what may already currently be
28 available through the OPA.

1 So if you look at page 2 of that letter, it says
2 "hydronic system balancing", and this I take it is the
3 OPA's comments on that program.

4 And, again, to preface this, the OPA did indicate
5 that, in their view, it is not duplicative of their
6 program, but I will read you what they said. It states:

7 "This program targets a niche opportunity within
8 the multi-unit residential building (MURB) market
9 that is not currently targeted in the Equipment
10 Replacement Incentive Initiative (ERII)."

11 Do you know what ERII is?

12 MR. MARCHANT: Yes.

13 MR. MILLAR: That's an OPA program?

14 MR. MARCHANT: That's a province-wide program.

15 MR. MILLAR: Thank you. It continues:

16 "The work done by Toronto Hydro on this proposed
17 program could allow the OPA to introduce a new
18 engineered worksheet to the ERII at a future
19 date, and Toronto Hydro has agreed to work
20 closely with the OPA to develop such a
21 worksheet."

22 Have I read that right?

23 MR. MARCHANT: Yes.

24 MR. MILLAR: So it seems to me -- and, again, this may
25 be a question better put to the OPA, but in the OPA's view,
26 what you are targeting here that they are not is only the
27 multi-unit residential building sector. Is that an
28 accurate reflection of their view, to the best of your

1 knowledge, of course?

2 MR. MARCHANT: I mean, in the letter, that is the way
3 they have interpreted it, but it actually includes, really,
4 office, hospitality, multi-res and institutional
5 facilities, as well.

6 MR. MILLAR: Well, yes. I was going to bring you then
7 to your description in your prefiled evidence of the
8 program, if you wouldn't mind turning that up?

9 Again, I apologize. I actually don't know what the
10 exhibit reference here is, but this is the descriptions of
11 the individual programs in the prefiled evidence, the
12 hydronic balancing program.

13 Then if I look at -- I guess it is page 4 of that, the
14 program description, this gets to exactly what you were
15 just saying. In the prefiled evidence, Toronto Hydro
16 states:

17 "This program is aimed at reducing the hydronic
18 system pump load and consumption in the office,
19 institutional, multi-residential and hospitality
20 sectors within the City of Toronto."

21 I think that is what you just said to me; is that
22 right?

23 MR. MARCHANT: Correct.

24 MR. MILLAR: Again, I may have to ask the OPA these
25 questions.

26 Are office, institutional and hospital sectors
27 included in the OPA's province-wide program?

28 MR. MARCHANT: Yes.

1 MR. MILLAR: So in that sense, are those elements of
2 your program duplicative?

3 MR. MARCHANT: I mean, in terms of the market sectors,
4 this program overlaps with other programs, but there is key
5 distinguishing features with this program, which includes
6 the audit or the system assessment incentive and the actual
7 targeting of specific equipment within these buildings.

8 MR. MILLAR: Okay.

9 MR. SOMMERVILLE: Sorry, I didn't hear the last part
10 of your answer. I didn't hear it.

11 MR. MARCHANT: I guess I will start from the
12 beginning, because I am not sure where you missed, but
13 basically -- actually, could you restate --

14 MR. SOMMERVILLE: You talked about the distinguishing
15 features, which includes the audit or system assessment,
16 and then the transcript says the actual targeting of
17 specific equipment within these buildings. Is that your
18 answer?

19 MR. MARCHANT: Correct.

20 MR. SOMMERVILLE: Thank you.

21 MR. MARCHANT: So we're only targeting the hydronic
22 systems within these buildings.

23 MR. MILLAR: Does the current OPA program allow them
24 to target hydronic systems?

25 MR. MARCHANT: I mean, it could apply under ERII. It
26 just there is no -- there's no provision in the province-
27 wide programs for the assessment component.

28 MR. MILLAR: And I didn't hear that. I thought you

1 said assessment component incentive. Did I hear that
2 correctly?

3 MR. MARCHANT: Correct. There is an incentive for
4 assessing the systems.

5 MR. MILLAR: I discussed this with Mr. Tyrrell
6 yesterday, but the -- would you agree with me that the
7 Board's code states that differences in incentives do not
8 make programs non-duplicative on their own at least? That
9 may be a matter for argument, but I will...

10 That is what the code states. I guess we can make of
11 that whatever we want.

12 MR. MARCHANT: I can't argue what the code states.

13 MR. MILLAR: Just to be clear, I heard you state there
14 were three differences. One is that your program will
15 target MURB, where the OPA's doesn't allow for that,
16 apparently.

17 The second is with regard to specifically targeting
18 the hydronic systems that may be eligible under the OPA,
19 but that is not the purpose of that program. Have I
20 summarized that correctly?

21 MR. MARCHANT: I think the more correct summary is it
22 provides participants an incentive to complete these
23 assessments, and there is no other provision for that in
24 the province-wide programs.

25 MR. MILLAR: Okay, that is helpful. Thank you.

26 If I could just have a quick moment, Madam Chair?

27 Thank you, panel. Those are my questions.

28 MS. HARE: Thank you. The Panel does have some

1 questions. I think Mr. Sommerville will go first.

2 **QUESTIONS BY THE BOARD:**

3 MR. SOMMERVILLE: First off, Mr. Tyrrell, were you
4 aware that the -- this is just a follow-up on a question
5 Mr. Millar asked you. Were you aware that the website of
6 the utility actually suggests to customers that they must
7 complete the conversion out of the flat-rate water heater?

8 MR. TYRRELL: Sorry. I was aware that there was
9 something on the website. I haven't reviewed what was on
10 the website for some time. In fact, I haven't gone
11 directly to that website to understand what was there.

12 MR. SOMMERVILLE: Does that information appear
13 anywhere in the evidence that you filed?

14 MR. TYRRELL: That I hadn't gone -- sorry?

15 MR. SOMMERVILLE: No. That the company actually had -
16 was advising customers that they were required to convert
17 out of the flat-rate program. Is that part of the
18 evidence?

19 MR. TYRRELL: I was aware that we had letters going
20 out to customers and that there were a series of letters,
21 and I have taken an undertaking to provide those letters.

22 It does ends -- you know, the final letter is sort of
23 a final notice that we will be dissolving this program, but
24 I do not know the legal -- you know, as per the
25 undertaking, the legal consequence or any of those types of
26 things.

27 MR. SOMMERVILLE: Is there any part of the evidence
28 that you have filed -- and you're the person who prepared

1 most of this evidence. Is there any part of this evidence
2 that actually reveals that to the Board in the evidence?

3 MR. TYRRELL: I am not sure if the application states
4 that. I would have to check.

5 MR. SOMMERVILLE: Did you share that information with
6 OPA, when you were discussing the subject with OPA?

7 MR. TYRRELL: No, I don't believe so.

8 MR. SOMMERVILLE: Thank you.

9 A number of the programs appear to -- let's take the
10 commercial energy management and load control program.
11 Seems to be essentially predicated on providing incentives
12 for parties to shift their load; have I got that right?

13 MR. MARCHANT: The commercial energy management load
14 control program, it actually contains two elements. So the
15 customer will be saving electricity and reducing demand
16 using an energy management system, but in return for that,
17 we're also getting the ability to control their load.

18 MR. SOMMERVILLE: Well, that's the peaksaver
19 component, isn't it?

20 MR. MARCHANT: Well, the commercial energy management
21 load control, it's the same system, but has two
22 capabilities, load control and energy management.

23 MR. SOMMERVILLE: Okay. But is the fundamental
24 purpose of what you are doing there, first of all, to try
25 to get people to use electricity at off-peak times?

26 MR. MARCHANT: It is not really designed for shift.
27 It is actually designed for people to better control when
28 they use energy.

1 So for example, a lot of these smaller retailers, the
2 equipment will run 24 hours a day. So there's many periods
3 throughout the year where they can turn it off at night.
4 So it is not specifically load-shifting.

5 MR. SOMMERVILLE: Okay.

6 MR. MARCHANT: Although they could use the capability
7 of the system to do that.

8 MR. SOMMERVILLE: Okay. One of the things that
9 occurred to me is that there appeared to be throughout a
10 number of these programs a kind of duplication of trying to
11 incent behavioural change, to change load from one period
12 of time to another.

13 Is that a fair statement, Mr. Tyrrell?

14 MR. TYRRELL: Yes, it is. And in fact, this is a
15 common barrier within the -- within the commercial
16 industrial markets.

17 Typically, what happens is that their primary business
18 or core or focus is not necessarily the energy, as pointed
19 out by Mr. Bilé. It is typically very low on the radar
20 screen in terms of their day-to-day operations.

21 And what this does is essentially provide that energy
22 information at their disposal, in fact, through an
23 automation system, that they can actively manage their
24 energy on a day-to-day basis.

25 And once you've got that information, they can make
26 subtle changes to certainly save energy.

27 I have had a great deal of experience from an
28 operations perspective, and it has proven time and time

1 again that this type of system truly works. If you provide
2 the energy information to the operations people that are
3 charged with managing their budgets, they will take
4 advantage of it, and provide the reports and the monitoring
5 and the tools.

6 If you don't, they won't.

7 And so this is really -- and you need that
8 persistence, so you need to continually remind them there
9 is a system and that they do have some incentive to keep,
10 you know, moving to target and change their behaviour.

11 So yes.

12 MR. SOMMERVILLE: I understand that.

13 The time of use architecture -- and that is -- Toronto
14 Hydro has been a leader in implementing that -- that has
15 the same purpose, does it not?

16 That is sort of an enabling, an underpinning of that
17 exercise, is it not? Isn't the whole purpose --

18 MR. TYRRELL: I guess the answer's --

19 MR. SOMMERVILLE: -- behind time-of-use rates the idea
20 that I can shift my load so I can save money by using more
21 electricity off-peak and less electricity on-peak?

22 MR. TYRRELL: Your -- you know, the comment is
23 absolutely correct. That is one element of the system that
24 they can take advantage of, as Mr. Marchant pointed out.

25 But we're really looking for energy reduction all the
26 time. We're trying to get them to actually manage their
27 energy, where they normally wouldn't.

28 Most large buildings would have an automation system,

1 a building automation system. Most of these customers
2 don't.

3 And they just wait for their bill to come and then
4 react to a high bill, which is far too much -- far too
5 late. So ultimately, this provides a tool where they
6 actively manage their system on a day-to-day basis.

7 MR. SOMMERVILLE: So you're suggesting that commercial
8 operators managing these budgets are not really motivated
9 by time-of-use rates particularly, and require some further
10 incentivizing in order to actually tune the system in? Is
11 that what you're suggesting?

12 MR. TYRRELL: Yes, it is.

13 MR. SOMMERVILLE: Okay. Thank you. Those are my
14 questions.

15 MS. TAYLOR: I just have a couple of questions, and I
16 don't know who is best suited to answer this.

17 In the examination by Board Staff of the MURB DR
18 program, I would just like to focus in a little bit on the
19 technology that is required.

20 So you are going to implement a wireless communication
21 strategy or configuration within a commercial building that
22 is not otherwise subject to any sort of in-suite metering,
23 potentially, or equipment control; is that correct?

24 MR. MARCHANT: Yes. I mean, it's aimed at the
25 condominium and -- condominium sector, so they typically
26 would not have any controls of any sort in the suite.

27 MS. TAYLOR: Okay. And so you --

28 MR. MARCHANT: Other than a typical thermostat.

1 MS. TAYLOR: Right. So then you will be putting a
2 wireless system in that building, then it would go to some
3 form of communication system.

4 Is that also a wireless communication system? What is
5 it interacting with at the street level? Is it an existing
6 THESL wireless system? Will the system have to be built
7 out to handle this capability? Has that been reflected in
8 this project cost, or is it going to occur someplace else
9 that we need to be aware of?

10 MR. MARCHANT: Basically, there will be a wireless
11 system within the building set-up. So it will communicate
12 with the wireless thermostats in each suite, and it will
13 receive signals from -- that we will dispatch and that will
14 be a cellular signal, similar to a peaksaver.

15 So we'll be providing communication back and forth
16 from our central activation source, which will be software-
17 based.

18 MS. TAYLOR: What is the actual communication channel
19 physically? Is it a cell tower or is it a wireless
20 configuration that you are using for your smart meter
21 program that is on your poles? Or is it something else,
22 and does that something else have to be created or expanded
23 or built?

24 MR. MARCHANT: It would be a separate system, and it
25 would be cellular-based.

26 MS. TAYLOR: Not on your poles? On buildings? Same
27 system that you are using for your existing smart meters,
28 or is it something else? I am just trying to get to --

1 MR. MARCHANT: It wouldn't be our smart meter system.
2 It would be a separate, dedicated system.

3 Ms. Taylor: Okay. If we could just turn to the
4 tracking -- I don't know the name off the top. It's the
5 commercial... I need to find my tab.

6 It's the management and tracking program. I think
7 that is the one we were just talking about. There we are.

8 It is the commercial, institutional, small industrial
9 monitoring and targeting system, and I would just like to
10 confirm a couple of things about the calculations of the
11 benefits of this program. And it comes back to the line of
12 questioning that you just answered for Mr. Sommerville, and
13 it relates to the installation of sub-metering equipment,
14 also supplementary controls to monitor technical --
15 electrical loads and building system operating conditions,
16 as well as data gathering.

17 So the question that I have is: What are you
18 considering the baseline for the calculation of the TRC and
19 the PAC? Is it flat-use rates unmonitored, or does it
20 reflect the architecture that is otherwise required by
21 legislation and regulation as the base case?

22 So my presumption is that these entities or locations
23 that you are targeting would otherwise be at some point in
24 the future sub-metered or suite-metered, and that this
25 information gathering and data and assessment capability
26 would otherwise be there.

27 So what you are doing is accelerating a future event
28 forward through time, with the offering of incentives and

1 cost subsidies; is that correct?

2 MR. MARCHANT: This program doesn't actually apply to
3 the MURB sector. It's --

4 MS. TAYLOR: I am reading directly from the tab. It
5 is conservation and demand management for commercial,
6 institutional and small industrial monitoring and
7 targeting.

8 This is your program?

9 MR. MARCHANT: Can you take us to that, please?

10 MS. TAYLOR: Sure. I am on page 9 of the MNT program
11 as of January 10th, 2011, and it includes

12 "...the installation services by specialized
13 trades to provide operational adjustments,
14 optimization and commissioning to improve energy
15 performance, install sub-metering and
16 supplementary controls to monitor the electrical
17 loads and building system operating conditions,
18 deploy monitoring and tracking software to enable
19 the participant to gather information from the
20 various electricity usage points being
21 monitored."

22 I am just trying to figure out whether this builds on
23 existing initiatives, takes things that are outside of and
24 pulls them in. I am confused by what you are doing here.
25 I know you have a sub-metering application, as well, in
26 front of the Board, so when you are talking about
27 installing sub-metering with third parties, would that
28 possibly include an affiliate of THESL in this business?

1 I just want to understand how it works, and does it
2 duplicate the already existing legislative initiatives to
3 install smart metering, MDM/R, information gathering,
4 because this all seems to exist in an alternative
5 framework. How is this different?

6 MR. MARCHANT: Well, this is basically metering within
7 the building, so you would be picking up HVAC loads,
8 lighting loads, that sort of thing, to track and monitor.

9 So this isn't -- this isn't a metering initiative that
10 would be covered under the utility. I think --

11 MS. TAYLOR: You are going to install sub-metering.
12 So how is this different from the other tracking or
13 wireless system that you've got in an alternative program
14 where you are talking about information on specific
15 systems?

16 MR. TYRRELL: Sub-metering is, by definition -- sorry,
17 just we can put a sub-meter on this lighting panel and it
18 would be called a sub-meter. But by definition in the
19 industry, sometimes we get sub-metering as sub-meter
20 provider kind of definitions.

21 And I think maybe that is where we're misaligned.
22 These are just ultimately equipment sub-meters. So I am
23 clipping on a meter to the wire, which is called a sub-
24 meter.

25 So we're using that infrastructure to feed back to a
26 central software control system that actually then can
27 monitor all of these elements where -- equipment from a
28 sub-meter perspective. It's nothing to do with the

1 traditional sub-meter kind of terminology in the industry.

2 MS. TAYLOR: So how does that differ, then, from the
3 wireless system that you are installing in, I guess, multi-
4 residential buildings that are not otherwise monitorable
5 with the centralized control? Is this again just a twist
6 of the same theme?

7 MR. TYRRELL: It is just a collection of data points
8 to feed a central system that we use to monitor.

9 MS. TAYLOR: Okay.

10 MR. TYRRELL: It has nothing to do with being billed
11 and --

12 MS. TAYLOR: I understand that. Now I'm looking to
13 say, well, you have other things that include wireless
14 technology on appliances, but just within a different
15 customer class.

16 MR. TYRRELL: Right.

17 MS. TAYLOR: Are you talking about significantly
18 different technology here, or is it solely the
19 differentiation between customer class? Really, have you
20 bifurcated one project into two and offered different types
21 of incentives, is my point?

22 MR. MARCHANT: Well, this is actually -- this program,
23 the client or participant would actually choose the system,
24 and it is a localized system.

25 So the participant is actually monitoring their own
26 use and providing the data to us at the end of the year to
27 confirm performance.

28 So it is not part of this big wireless web of

1 information we're getting. It is actually participant-
2 based.

3 MS. TAYLOR: That's the key difference. One is
4 command and control that you would --

5 MR. MARCHANT: This is strictly monitoring.

6 MS. TAYLOR: And this is strictly --

7 MR. MARCHANT: Correct, and targeting. So they have
8 to set a target and achieve that to receive incentives, but
9 if there was 100 participants, theoretically they could all
10 have different systems depending on their needs.

11 MS. TAYLOR: Thank you. Those are my questions.

12 MS. HARE: Thank you. Mr. Rodger, do you have re-
13 direct?

14 MR. RODGER: No, thank you, Madam Chair.

15 MS. HARE: Okay, thank you. Thank you, witnesses.
16 You are excused.

17 We turn now to our third panel, OPA, and we do thank
18 you for making yourself available. As you saw from the
19 transcript, we thought it would be essential to get your
20 opinion on the letter that was sent on April 21st and some
21 other comments about the program.

22 So, Mr. Vegh, would you like to introduce your
23 witness, and, Ms. McNally, come to be sworn.

24 MR. VEGH: Thank you, Madam Chair. Just to make an
25 appearance, my name is George Vegh. I am appearing on
26 behalf of the Ontario Power Authority.

27 The Ontario Power Authority's witness, Ms. Julia
28 McNally, is now being sworn. I will introduce her once she

1 is on the record.

2 **ONTARIO POWER AUTHORITY - PANEL 1**

3 **Julia McNally, Sworn**

4 **EXAMINATION-IN CHIEF BY MR. VEGH:**

5 MR. VEGH: Thank you. Would the witness please state
6 her name and position on the record?

7 MS. McNALLY: I'm Julia McNally with the Ontario Power
8 Authority, and I am the director of market transformation
9 in the conservation division.

10 MR. VEGH: Ms. McNally, on -- last week, in response
11 to the Board's request, the OPA filed some material which I
12 believe has been marked as Exhibit K2.1, and that consists
13 of a covering letter, as well as a witness statement for
14 Julia McNally and a curriculum vitae for Julia McNally.

15 Do you have copies of those documents?

16 MS. McNALLY: Yes, I do.

17 MR. VEGH: And the document entitled "Witness
18 Statement", I take it you prepared this document?

19 MS. McNALLY: Yes, I did.

20 MR. VEGH: And is it accurate and complete, to the
21 best of your knowledge?

22 MS. McNALLY: Yes.

23 MR. VEGH: And in this witness statement, you state
24 your title as the director of market transformation.

25 Could you please let the Panel know what your
26 responsibilities are in that position?

27 MS. McNALLY: Yes. I'm responsible for two major
28 activities. I'm responsible for the conservation

1 division's input into OPA regulatory proceedings, and I'm
2 also responsible for our generating and testing ideas for
3 next generation conservation programs, policies and
4 technologies.

5 With respect to this proceeding, my responsibilities
6 fell under the regulatory piece, and I was responsible for
7 putting together the OPA's response to Toronto Hydro's
8 request for an opinion on duplication. And, in that
9 capacity, I was responsible for coming up with our approach
10 to assessing duplication, as well as reviewing the
11 materials and speaking with our subject matter experts to
12 get their input on our position.

13 MR. VEGH: Thank you. And you referred to your
14 response. Can you turn up, please, Exhibit K1.1, which is
15 a letter from the Ontario Power Authority to Toronto Hydro
16 dated April 21, 2011?

17 MS. McNALLY: Yes.

18 MR. VEGH: And I see that you signed this letter on
19 behalf of Mr. Pride, the vice president conservation
20 division?

21 MS. McNALLY: Yes, I did.

22 MR. VEGH: And were you involved in the preparation of
23 this letter?

24 MS. McNALLY: Yes. So the work I mentioned, in terms
25 of developing the approach and reviewing and consulting
26 with my subject matter experts, resulted in this letter.

27 MR. VEGH: Thank you. Now, I understand from your
28 evidence that you are here at the request of the Panel to

1 provide the Panel with information on this letter, Exhibit
2 K1.1.

3 So could you please provide the Panel with a brief
4 summary of your evidence?

5 MS. McNALLY: Yes. I am very pleased to be here on
6 behalf of the OPA today to provide assistance to the Board
7 on our letter of April 21st, which is Exhibit K1.1.

8 The OPA, as already mentioned, wrote this letter in
9 response to a request from Toronto Hydro to review their
10 programs and provide our opinion on duplication.

11 We reviewed Toronto Hydro's application to the Board,
12 and, in reviewing it, we adopted a purposive approach to
13 determine whether or not we thought there was duplication.

14 This approach is discussed in my witness statement,
15 which is K2.1. And we developed this approach to guide us,
16 as there had not yet been any decisions on this issue from
17 the Board, and we wanted to come up with a structured way
18 of addressing the issue.

19 And when we say "purposive approach", what we were
20 trying to do is ask ourselves: What did we think the
21 purpose of the provision in the code against duplication
22 was? And then we assessed -- while we were going through
23 the programs, we looked at those purposes. As you will see
24 in the witness statement, we identified four purposes.

25 So when we sat down with Toronto Hydro's programs, we
26 clustered them into two categories, as you will see in our
27 letter. We had a group that were direct savings programs,
28 and those were, in our letter of K1.1, 5 to 9, and then the

1 second category were the marketing and outreach programs,
2 programs 1 to 4.

3 We found we were able to assess the first category,
4 the direct savings programs. We were able to take Toronto
5 Hydro's programs and compare them to the province-wide
6 initiatives. And, as you can see from the witness
7 statement, we found -- it was our opinion that they weren't
8 duplicative, and we provided our reasons, and, as well, we
9 provided some conditions that we felt were necessary to
10 avoid duplication. That is on page 2 of our letter of
11 April 21st.

12 We had a more difficult time with respect to the
13 marketing and outreach programs, and, at the end of the
14 day, we felt that we couldn't provide an opinion on those.
15 And the source of the problem was taking Toronto Hydro's
16 standalone marketing and outreach programs and comparing
17 them to essentially elements of the province-wide programs.

18 So in the province-wide programs, there is not a
19 standalone marketing program. Marketing is part of the
20 initiatives. So we felt we couldn't come up with a
21 structured way of comparing a standalone program to an
22 element of the programs.

23 And we -- as you can see from our letter, we ended up
24 simply stating that in our opinion the activities in the
25 program -- so those marketing and outreach programs -- were
26 the types of activities that you could fund, that an LDC
27 could fund out of the PAB, program administration budget.

28 And I just want to provide a little more clarification

1 on that. I know there was quite a lot of discussion
2 yesterday about that sentence.

3 And there is two points I think it is important for me
4 to clarify.

5 First, that when we mentioned that the programs could
6 be funded, what we meant was that the activities within the
7 programs could be funded. It is that type of activity, the
8 marketing and outreach activities.

9 And the second piece is that -- so it is activities,
10 not program.

11 The second piece is that it is not that the LDCs could
12 apply for marketing and outreach programs. It is that the
13 PAB they are allocated, the existing PAB, can be used for
14 marketing and outreach programs, like those listed in these
15 programs.

16 So that is our -- that was what we were communicating
17 in the letters. As I said, two categories we felt the
18 direct savings were not duplicative based on our reasons
19 and the conditions, and in the second category, in the
20 absence of guidance from the Board, we really felt we
21 couldn't provide an opinion to compare a standalone program
22 against an element of a program.

23 MR. VEGH: Thank you, Ms. McNally.

24 I have no further questions.

25 MS. HARE: Thank you. Mr. Rodger, do you have cross-
26 examination of this witness?

27 MR. RODGER: I do have a few questions, Madam Chair,
28 but I would prefer to go at the end, if that pleases the

1 Board.

2 MS. HARE: It would be our preference for you to go
3 first.

4 **CROSS-EXAMINATION BY MR. RODGER:**

5 MR. RODGER: Now, Ms. McNally, in your statement that
6 was filed on Friday, you draw a distinction between the
7 purpose of OPA programs and the OEB-approved programs.

8 If I could turn you to the bottom of page 1 of your
9 witness statement at line 27, it reads:

10 "At the most general level, the OPA-contracted
11 province-wide programs target customers and
12 measures that are applicable province-wide, while
13 the Board-approved programs are meant to target
14 other and regionally-specific savings
15 opportunities."

16 And you also go on on page 3, line 2, to talk about
17 how the OPA programs are designed to be broad and flexible
18 to address various needs of LDCs in communities across
19 Ontario.

20 So I took that evidence to mean that the OPA
21 necessarily has to design for province-wide programs, those
22 that are very broad and generic, since you are planning for
23 the diversity of the whole province, from cities to towns
24 to villages, to northern Ontario, to southern Ontario, and
25 from is a very broad-brush approach to these programs that
26 you are putting in place.

27 Is that kind of a fair summary of this part of your
28 evidence?

1 MS. McNALLY: Yes. Well, I think I would stick with
2 the word "flexible".

3 So the OPA, along with the LDCs, designed a suite of
4 programs that covered every sector, and we were directed to
5 provide a suite of programs that covered every sector, and
6 they were designed to be flexible enough for LDCs across
7 the province to use them effectively in their territories.

8 So as you know, we have a program for the industrial
9 sector, the commercial sector and the residential sector,
10 as well as a low-income program and an Aboriginal program.

11 So they are meant to be flexible and meet the needs of
12 communities across the province.

13 MR. RODGER: Now, in your statement, you also
14 described Toronto Hydro's marketing and education programs,
15 the so-called programs 1 to 4, as standalone programs; is
16 that right?

17 MS. McNALLY: You will have to direct me to --

18 MR. RODGER: If you look to page 3, line 8:

19 "The THESL programs are standalone programs."

20 MS. McNALLY: Yes.

21 MR. RODGER: What did you mean by "standalone
22 programs"?

23 MS. McNALLY: That they were described as a program
24 unto themselves.

25 So you will see in the THESL's application, they have
26 listed nine programs, and I call each one of those a
27 standalone program. And when I used that phrase, I was
28 contrasting it.

1 In the OPA province-wide programs, marketing and
2 outreach is a component of each of our initiatives. And
3 then the nomenclature gets a little bit messy.

4 In the case of the province-wide programs, we call --
5 we have a residential program, a commercial program, an
6 industrial program. And each of those programs has an --
7 have a series of initiatives under them.

8 And so it is those initiatives that we compared to the
9 THESL programs.

10 Each of those initiatives and the province-wide
11 programs as a whole have marketing associated with them,
12 but there isn't a standalone initiative for marketing.

13 MR. RODGER: Okay. So for those Toronto Hydro
14 standalone programs, 1 to 4, would you agree with me that
15 those programs reflect Toronto Hydro's really regionally-
16 based approach for -- about the needs of educating
17 consumers within the city of Ontario (sic) on energy
18 issues? Would that be a fair characterization?

19 MS. McNALLY: I believe that is how Toronto Hydro has
20 described them.

21 MR. RODGER: And do you agree with that?

22 MS. McNALLY: It is not something that the OPA has an
23 opinion on.

24 MR. RODGER: And would you agree with me that the city
25 of Toronto is a market that has different characteristics
26 than other parts of Ontario, whether it is a large number
27 of commercial towers, head offices, decision-makers, number
28 of languages spoken in the city? Would you agree with

1 that?

2 MS. McNALLY: I believe that many LDCs take the
3 position that they have unique characteristics.

4 MR. RODGER: And you don't see Toronto as any
5 different than any other place in Ontario?

6 MS. McNALLY: I don't believe I said that. I said
7 many LDCs believe that they have unique characteristics,
8 and that is one of the reasons that we developed flexible
9 programs, so different LDCs could respond to their
10 communities' needs.

11 MR. RODGER: Would you also agree that Toronto has
12 unique characteristics?

13 MS. McNALLY: I am sure Toronto has unique
14 characteristics. It is an urban -- it is the largest urban
15 centre in Ontario.

16 MR. RODGER: And given what you said about the broad
17 nature of the OPA's programs, would you be surprised that
18 Toronto Hydro would identify additional needs that it may
19 have for its specific and education outreach programs?

20 MS. McNALLY: Would I be surprised? Surprise isn't an
21 emotion I felt in reading this.

22 [Laughter]

23 MS. McNALLY: Certainly we received a number of
24 programs. We noticed that, again, there are five --
25 there's a number that are direct savings, there's a number
26 that are marketing outreach. When you looked at the direct
27 savings, they have marketing components.

28 There was also marketing associated with the province-

1 wide programs, and that marketing comes in really kind of
2 three flavours.

3 You can bundle it. There is province-wide marketing,
4 really aimed at building a culture of conservation.

5 The second level is province-wide funding, raising
6 awareness about the specific programs, so kind of
7 transactional marketing.

8 And then there is a third bucket of budget for
9 marketing that is included in the PAB, that is given to the
10 LDCs to do their own unique marketing.

11 MR. RODGER: But my question was -- and maybe you are
12 not surprised. Maybe there is another word.

13 But given the size of Toronto and the market that you
14 are well aware of, is it, you know -- "surprising" is the
15 best word I can think of, that Toronto Hydro might have
16 additional needs to what you are doing for the province on
17 these province-wide basis, these broad programs?

18 Or would you assume that Toronto has the same approach
19 as Peterborough or Omemee with respect to CDM programs?

20 MS. McNALLY: I would expect that each community would
21 develop its unique approach, using their PAB funding to
22 pursue that approach.

23 And then all of the LDCs had an opportunity to develop
24 tier 2 and tier 3 programs in order to address those
25 additional needs that weren't being addressed by the
26 province-wide programs.

27 So I am not surprised that Toronto Hydro -- and we're
28 very pleased Toronto Hydro has come forward with an

1 application for a series of programs.

2 MR. RODGER: Now, in this case, a few days before the
3 start of the hearing, Board Staff asked us to file the
4 schedules to the OPA programs, and we did this, some 1,500
5 pages or so of material.

6 Am I correct when I say that nowhere in those
7 schedules is there a laundry list of criteria which says,
8 The OPA considers the following laundry list of 25
9 activities as appropriate marketing and education
10 initiatives that will be specifically funded under the PAB?

11 MS. McNALLY: So I don't have the schedules here, but
12 I do have the master agreement, and the way the parties
13 have addressed marketing is they have addressed it in the
14 master agreement.

15 And so the master agreement -- I don't know what the
16 exhibit number is or if it is here.

17 MR. RODGER: I don't believe the master agreement is
18 before the Board. But let me ask you generically, is there
19 a similar laundry list of, Here is a list of the eligible
20 categories within which the utilities' education programs
21 would have to fit in order to be eligible and funded under
22 PAB?

23 MR. VEGH: I'm sorry, Mr. Rodger, what document are
24 you referring to that might contain the laundry list? Ms.
25 McNally referred to the master agreement.

26 MR. MILLAR: Your mic, George.

27 MR. VEGH: Mr. Rodger is referring to the absence of a
28 laundry list. In thousands of pages of documents, you can

1 appreciate that is a very difficult question to answer.
2 Ms. McNally referred to the master agreement. I apologize.
3 We had just assumed that the master agreement was filed
4 with the Board. I think it was filed in the Hydro One
5 case. I think we assumed it was filed in this case, as
6 well.

7 MR. MILLAR: It is on the record here, I can confirm,
8 Mr. Vegh. Do we have a reference number? It is Exhibit K,
9 tab 4, schedule 3.

10 MR. RODGER: Thank you.

11 MS. McNALLY: But I can take a step back before we dig
12 into the document and provide a higher level answer. And
13 the higher level answer is that there is not a laundry list
14 of marketing activities. The parties, the OPA and the
15 LDCs, wanted to give the LDCs some flexibility to identify
16 what their best marketing approaches were.

17 So this was left open to the LDCs to determine, in
18 their unique community, what the appropriate marketing was,
19 and it wasn't felt appropriate or necessary to constrain
20 that.

21 If you go to the master agreement, K-4-3, there is a
22 section 2.3 on marketing. And this section divides the
23 responsibilities between the OPA and the LDC.

24 I believe that is page 6.

25 MR. MILLAR: Madam Chair, I may have misdirected you.
26 We're taking a more close look at the document I referred
27 you to. I think that is actually a schedule and not the
28 master agreement itself.

1 I am actually not sure if the master agreement is on
2 the record. It may not be.

3 MS. McNALLY: Well, I think then pulling away from the
4 document, the evidence that -- what the parties did is not
5 develop a laundry list, in order to give flexibility to the
6 LDCs to craft an appropriate marketing strategy for
7 themselves.

8 There was a requirement to comply with marketing
9 standards, and, again, that is pursuant to the government's
10 directive to the parties to come up with a coherent,
11 consistent brand. So there are brand standards that all of
12 the utilities must follow, but there aren't rules about the
13 marketing activities.

14 The activities -- PAB, the program administration
15 benefit, can be used for activities that promote the
16 programs, but we haven't itemized those.

17 MR. VEGH: Would it be helpful to the Panel for the
18 OPA to produce a copy of the master schedule or the master
19 agreement, and then have it filed in time for argument, I
20 assume later today? And, if so, then perhaps Ms. McNally
21 can just reference this section that she would be referring
22 to for your benefit.

23 MS. HARE: That would be helpful, Mr. Vegh.

24 MR. SOMMERVILLE: There was a reference yesterday, Ms.
25 McNally, to the terminology "eligible expense".

26 MS. McNALLY: Yes.

27 MR. SOMMERVILLE: Is that germane to your description?

28 MS. McNALLY: Yes. So the sections that I would take

1 you to in the master agreement, if you had one, are the
2 marketing section 2.3 at page 6, and then to the section
3 that looks at funding and payment, which is page 18,
4 article 4, where there is reference to using the program
5 administration budget, and here I am at 4.1(b)(i):

6 "use the Program Administration Budget only for
7 LDC Eligible Program Administration Expenses."

8 And then --

9 MS. HARE: Excuse me, Ms. McNally. Do you actually
10 have that master agreement with you?

11 MS. McNALLY: I do.

12 MS. HARE: If we were to take our morning break, we
13 could probably make copies and have that before us, and I
14 think that would be helpful. How many pages is it?

15 MS. McNALLY: It is 53 double-sided, plus schedules.
16 It is 97 pages.

17 MR. BUONAGURO: Is there a particular section that you
18 are referring to, if I may try to be helpful?

19 MS. HARE: The question is: Do we need all of it, or
20 is there one chapter --

21 MS. McNALLY: We could photocopy the marketing
22 section, the funding and payment terms and the definition
23 of an LDC -- LDC eligible program administration expense.

24 MS. HARE: What we will do is we will make copies of
25 that section. We will want the entire agreement, but we
26 don't have to do that at the break, but I was having
27 trouble following, you know, your evidence without having
28 it in front of me.

1 So, Mr. Millar, if you could make copies of the
2 section that Ms. McNally is referring to, and we will take
3 our break for 20 minutes.

4 MR. MILLAR: Thank you, Madam Chair.

5 --- Recess taken at 10:49 a.m.

6 --- On resuming at 11:17 a.m.

7 MS. HARE: Please be seated.

8 So we have the relevant pieces from the master
9 agreement. Mr. Millar, can we have an exhibit number?

10 MR. MILLAR: Yes. We will call that Exhibit K3.2. It
11 is an -- excerpts from the master agreement.

12 **EXHIBIT NO. K3.2: EXCERPTS FROM MASTER AGREEMENT.**

13 MR. MILLAR: And Madam Chair, I understand the OPA
14 will also be filing, or has agreed to file, a full version
15 of the document. We will call that Undertaking J3.3.

16 **UNDERTAKING NO. J3.3: TO FILE A FULL VERSION OF**
17 **MASTER AGREEMENT.**

18 MS. HARE: Thank you.

19 So Mr. Rodger, you are cross-examining?

20 MR. RODGER: Thank you, Madam Chair.

21 So Ms. McNally, just turning to this new exhibit,
22 then, K3.2, the master agreement, you had before the break
23 made reference to section 2.3, I believe?

24 MR. VEGH: Sorry, Madam Chair, just on that, would you
25 like Ms. McNally to repeat her answer that she was
26 providing before the break?

27 MS. HARE: Yes, please.

28 MR. VEGH: That you thought it would be helpful to

1 have the agreement with you?

2 MS. HARE: Yes, please.

3 MR. VEGH: Thank you.

4 MS. McNALLY: So you now have the excerpts of the
5 master agreement, and I just also note you will see at the
6 top of the document you have that this is a copy that was
7 filed in our fees case. So that reference is not to this
8 case, but is to the next week's.

9 So I had taken you to page 6, section 2.3 on
10 marketing. You will recall that my response had been that
11 marketing is dealt with in the master agreement, not in the
12 individual schedules, and that we -- that the OPA and LDC
13 in our working groups had decided -- there is no
14 prescription on marketing; it is left to the LDCs.

15 So on page 6, section 2.3, you will see 2.3(a) sets
16 out the OPA's roles with regard to marketing.

17 And then on the next page, page 7, starting section
18 (b), it sets out the LDCs' roles and responsibilities with
19 regard to marketing. And in particular, I want to draw
20 your attention to two sections.

21 (b)(i), that states that the LDC:

22 "will market each Registered Initiative to the
23 relevant target sector, accurately describing
24 each such Registered Initiative..."

25 And so on. So that sets out the role of the LDC in
26 marketing the programs.

27 You will notice the next subsection, the next
28 subsection 2, talks about the LDCs' role developing

1 relationships with the eligible participants. So that is
2 account management.

3 And then I will draw your attention to the last
4 section on that page, which is section (vi), which notes
5 that the LDC:

6 "will, in performing its obligations under this
7 Master Agreement... comply with the Marketing
8 Standards."

9 So that, then, sets out the marketing. You will see
10 it creates some flexibility for the LDCs.

11 The next section that I drew your attention to is the
12 funding and payment section. So that is page 18. I don't
13 have the same version you do, so I am not sure which page
14 it is of yours.

15 And here, I commented about the program administration
16 budget. So in particular, I want to draw your attention to
17 section 4.1(b)(i), and that is that the LDC may:

18 "use the Program Administration Budget only for
19 LDC Eligible Program Administration..."

20 But also, sorry, if you take a step back and look at
21 the opening paragraph:

22 "The LDC will use the funds provided to it by the
23 OPA ...for [the] purposes solely related to the
24 OPA-Contracted Province-Wide CDM Programs."

25 And then the last section -- again, I apologize, I
26 don't know precisely what page of your version it is -- but
27 on page 8, or 66 of 97 in my document, there is a
28 definition of LDC eligible program administration expense.

1 And that's -- it's at the bottom of page 8.

2 And I want to draw your attention, in particular, to
3 subsection (b) of that definition. An eligible program
4 administration expense means expenses that:

5 "are incurred after the Effective Date and are
6 directly related to a Registered CDM Program."

7 So again, what is created here is a framework that
8 gives flexibility to the LDCs to develop marketing and
9 outreach programs that they believe are suitable for their
10 market.

11 MS. HARE: Thank you.

12 MR. RODGER: So Ms. McNally, looking at section 2.3 on
13 page 6, and the heading is "Marketing" and you've gone
14 through some of the subsections here.

15 Let me ask at the outset: Do you see no difference
16 between marketing on the one hand, and education and
17 outreach on the other?

18 MS. McNALLY: I think it would be fair to say that
19 there is a spectrum and no clear demarcation.

20 So marketing outreach education, I think you can come
21 up with examples of things that are probably clear
22 marketing and clear education.

23 But much of what we do in the conservation programs is
24 educate consumers about conservation in order to get their
25 interest in it. So you start with the kind of culture,
26 education, awareness-raising, and then the second step,
27 once consumers are aware of the benefits of energy
28 efficiency, you then move in to sell the product.

1 So what we're finding, given, I mean, I think much
2 research, what you need do is raise awareness and educate
3 first, and then you sell the product.

4 MR. RODGER: So just to -- if I understand that, on
5 that continuum -- I think that is a good analogy -- on
6 either extreme, you have marketing on one hand extreme and
7 education and outreach on the other.

8 They could be very different things on the end of
9 those -- that spectrum; would you agree with that?

10 MS. McNALLY: I am not sure that I would put outreach
11 in the same camp as education. So you can imagine a pure
12 education program, for instance, going into the schools and
13 having a curriculum.

14 MR. RODGER: So those things would be different,
15 marketing and education, then?

16 MS. McNALLY: Well, no. I think you can probably come
17 up with extremes, but in almost all of the marketing work
18 that the OPA and LDCs have done, there is always an element
19 of education.

20 You are raising awareness of consumers, commercial,
21 residential, industrial, about energy efficiency and
22 conservation. You are educating them about the benefits of
23 it. And then you sell the product.

24 So there is -- there's overlap in these concepts.

25 MR. RODGER: Okay. That's helpful.

26 And then in trying to apply the letter from Mr. Pride
27 to Toronto Hydro on April 21st, on page 1, which your
28 counsel referred to, right at the bottom you say:

1 "The OPA is of the opinion the programs 1 to 4
2 above are payable through the existing program
3 administrative budget provided under the
4 province-wide programs."

5 Are you saying, then, that Toronto Hydro's programs 1
6 to 4, they fit within this section 2.3, in your view?

7 MS. McNALLY: Fit within section...

8 Okay. 2.3 of the master agreement?

9 MR. RODGER: Yes.

10 MS. McNALLY: So what we're saying is the types of
11 activities - and I provided this clarification in my
12 opening statement - the types of activities that are
13 described in programs 1 to 4 are types of activities that
14 could be used to market and outreach the programs, through
15 -- and funded by the PAB.

16 MR. RODGER: So programs for Toronto Hydro's programs
17 1 to 4 may or may not come within 2.3? You are just
18 offering no opinion on that point?

19 MS. McNALLY: So I am saying the types of the
20 activities that are described in those paragraphs are the
21 types of activities that one could imagine using to market
22 and raise awareness about the programs.

23 MR. RODGER: But I guess what I am trying to clarify,
24 Ms. McNally, is the statement in the April 21 letter that
25 they are payable, and if they're payable, it would seem
26 they must, then, fall within the section 2.3, the marketing
27 initiative?

28 MS. McNALLY: Again, if we go back to the language of

1 2.3, particularly on page 7, (b)(i):

2 "The LDC will market each registered initiative
3 to the relevant target sector."

4 So it is open, and then, again, as I referenced, the
5 PAB ineligible expense is one that directly relates to the
6 registered CDM program.

7 MR. RODGER: See, I took your evidence just now to
8 mean that the 2.3 was like the framework to fit in Toronto
9 Hydro's programs 1 to 4, and then they would, therefore, be
10 paid within section 4.1(b), which you also took us to, the
11 funding principles. Is that not the framework that you've
12 just laid out?

13 MS. McNALLY: So this is the framework for marketing
14 activities, and I apologize if we created any confusion in
15 our letter and I tried to clarify it, and I will again.

16 So it is not that these programs, as a complete set,
17 would be payable under PAB. It is that the LDCs have been
18 given PAB funding, and with that PAB funding they can do
19 marketing and outreach and education for their consumers.
20 So they can take that money and they can allocate it to
21 activities like those described in the programs.

22 It is not that the program as a whole, the standalone
23 program -- it's those kind of activities under their
24 ability to market the programs.

25 MR. RODGER: Maybe I can clarify this another way.

26 Toronto Hydro's testimony yesterday, Mr. Tyrrell and
27 others, their evidence is that what you are calling Toronto
28 Hydro's programs 1 to 4 are incremental to the OPA's

1 programs and, as such, they applied to the Board for
2 approval, and they were very clear they had regard
3 throughout this application to this Board's CDM Code, in
4 particular, section 4.1.2 and section 4.3, which allow
5 distributors to apply to the Board for funding for
6 education programs.

7 You are aware of that provision of the code?

8 MS. McNALLY: Yes, I am.

9 MR. RODGER: Yes. Now, is it your position that this
10 particular section of the CDM Code is unnecessary? And I
11 mean by that: Is it your view that every penny of
12 education-related funding could be funded under the OPA's
13 program administrative budget?

14 MS. McNALLY: No, that is not our view. And, again,
15 in our letter, we didn't mean to speak on how to interpret
16 the educational provisions. As you know, we took the
17 position that we didn't feel we could come to a conclusion
18 on section 2.3, coordination. We didn't offer an opinion
19 on 4.3 of the code, the educational CDM programs.

20 And I apologize. I don't know whether this is an
21 exhibit or what the number is. We simply commented that
22 the types of activities that are included in programs 1
23 to 4 could, in theory, be funded using the PAB. But,
24 again, we didn't comment on -- we didn't feel able to
25 comment on whether or not there was duplication between the
26 standalone programs and the tier 1 programs, and we didn't
27 comment on section 4.3.

28 MR. RODGER: So, Ms. McNally, when you filed the April

1 21st letter and your witness statement Friday and your
2 evidence today, you are in no way say, then, that THESL, in
3 your view, is somehow ineligible to fund its education
4 programs by relying on the CDM provisions?

5 MS. McNALLY: Sorry, would you repeat the question?

6 MR. RODGER: That all of your evidence that you've
7 prefiled and you're talking about, that you have talked
8 about today, in no way is the OPA saying or coming to the
9 conclusion that, in its view, THESL is somehow ineligible
10 to fund its programs 1 to 4 by relying on the CDM Code
11 provisions?

12 MR. VEGH: Sorry, Mr. Rodger, could you clarify which
13 provisions you're talking about? You have taken the
14 witness to a few of them now, and she said she hasn't even
15 looked at the 4.3 provisions and Toronto Hydro didn't ask
16 her to.

17 So perhaps you could be a little more precise in your
18 question.

19 MR. RODGER: Well, I will read them again. This is
20 the CDM Code, section 4.1.2. It says:

21 "Despite section 4.1.1, a distributor may apply
22 to the Board for approval of CDM programs where
23 cost effectiveness cannot be demonstrated if the
24 program is:..."

25 And if you drop down to (c):

26 "... designated for educational purposes."

27 So that opens the door to allow utilities to come
28 forward and make an application. And then section 4.3

1 provides other requirements about educational programs and
2 what the distributor must do. And our evidence or Toronto
3 Hydro's evidence yesterday is that it's filed an
4 application and, in its view, it meets all of these
5 requirements.

6 So my question to you is: Your evidence here today
7 and all of your prefiled evidence, the OPA is not saying
8 that Toronto Hydro is somehow ineligible to fund its
9 education programs 1 to 4 through these provisions of the
10 code that I have just gone through?

11 MS. McNALLY: We have not offered an opinion on the
12 applicability of 4.3, no.

13 MR. RODGER: You're not saying in any way Toronto
14 Hydro is not ineligible? That is not your position vis-à-
15 vis the CDM Code?

16 MS. McNALLY: It is not our role to make a comment on
17 that.

18 MR. RODGER: So you have no position on this issue?

19 MS. McNALLY: In our letter of April 21st, we have not
20 taken a position on this issue, nor were we asked to, nor
21 is it our role.

22 MR. RODGER: And if I put to you that -- and this is
23 by no means to be critical, but we're all in a new world
24 here. This is the first application that has actually made
25 it to a hearing on this new CDM reality and the targets we
26 have to meet, et cetera.

27 Is part of the issue here that there is an overlap
28 between the education programs that the OPA funds under PAB

1 and what the OEB could approve under these provisions of
2 the CDM Code?

3 Is that part of the difficulty here that we're trying
4 to work through?

5 MS. McNALLY: Certainly the difficulty that the OPA
6 faced in trying to give an opinion, not on 4. -- on 4, but
7 on 2.3, was a challenge of understanding how to compare or
8 assess a standalone marketing program, as I mentioned in
9 the beginning, versus marketing, which is a component.
10 Certainly that is what we were struggling with and look
11 forward to guidance from the Board on how to untangle
12 issues.

13 MR. RODGER: One final question, Ms. McNally. I asked
14 Mr. Tyrrell yesterday whether the OPA had ever
15 categorically and without doubt confirmed to Toronto Hydro
16 that its marketing and education and outreach programs, the
17 so-called programs 1 to 4, would in fact -- albeit approved
18 by the OPA, as being eligible for funding under PAB, and
19 Mr. Tyrrell's answer was, no, at no time had that absolute
20 assurance been given.

21 Is Mr. Tyrrell's answer the same as your understanding
22 on this point?

23 MS. McNALLY: The OPA has never been asked to give
24 such an opinion.

25 MR. RODGER: Thank you. I have no further questions.

26 MS. HARE: Thank you. Mr. Warren.

27 **CROSS-EXAMINATION BY MR. WARREN:**

28 MR. WARREN: Ms. McNally, my name is Robert Warren. I

1 am counsel to the Consumers Council of Canada in this
2 matter.

3 I would like to begin, if I can, just with some
4 background documents, Ms. McNally. May I assume that you
5 are familiar with the Minister's directive which was issued
6 on -- sorry, that was approved by Lieutenant Governor on
7 March 31st of 2010?

8 MS. McNALLY: Sorry, which directive are you referring
9 to?

10 MR. WARREN: The Minister's directive dealing with the
11 various CDM programs that are now before the Board.

12 MS. McNALLY: And the date on that one?

13 MR. WARREN: It was approved by the Lieutenant
14 Governor on the 31st of March 2010.

15 MS. McNALLY: Is this the directive to the Board or to
16 the OPA?

17 MR. WARREN: It's a directive to the Board.

18 MS. McNALLY: I believe I have that one with me, yes.

19 MR. WARREN: My question was whether or not you were
20 familiar with it. I assumed that. You referred to it in
21 your examination-in-chief. You're familiar with it?

22 MS. McNALLY: Yes, I am.

23 MR. WARREN: Okay. And my only question is that in
24 the directive to the Board -- actually, do you have a copy
25 of it in front of you?

26 MS. McNALLY: I do have a copy, yes.

27 MR. WARREN: In the directive to the Board, it
28 indicates in section 6:

1 "The Board shall issue a code that includes rules
2 relating to the reporting requirements..."

3 Et cetera, et cetera. And then it lists certain
4 objectives that the Board has to have regard to, and
5 objective (h) reads as follows -- sorry, I've got the wrong
6 one. (a), I apologize, 6(a):

7 "The Board-approved CDM programs shall not
8 duplicate OPA-contracted province-wide CDM
9 programs that are available from the OPA at the
10 time of Board approval."

11 Are you familiar with that section?

12 MS. McNALLY: I can see that section right now, yes.

13 MR. WARREN: Okay. And the Board's own CDM Code, are
14 you familiar with the Board's CDM Code issued on September
15 16th of 2010?

16 MS. McNALLY: I do have a copy with me here of the
17 code dated September 16th.

18 MR. WARREN: If you could turn up section 2.3.2 of
19 that document, please; it reads:

20 "Distributors shall not apply for Board approval
21 of CDM Programs that duplicate existing OPA-
22 Contracted Province-Wide CDM Programs."

23 Have I read that correctly?

24 MS. McNALLY: Yes. That appears to be what it says.

25 MR. WARREN: Okay. Now, against that background, as I
26 understood your response to Mr. Vegh's question in
27 examination-in-chief, was that the Toronto Hydro -- and the
28 evidence in this case is that Toronto Hydro delivered its

1 evidence in this application to the OPA sometime in the
2 early part of March.

3 Do you understand that to be the case?

4 MS. McNALLY: It was in the early part of March that
5 Toronto Hydro approached us to request our opinion on
6 whether or not there was duplication.

7 MR. WARREN: Okay. Now, correct me if I am wrong, but
8 as I understood your testimony, that circumstance was the
9 first -- or that circumstance prompted you to develop
10 criteria for the evaluation of duplication.

11 Have I understood that correctly?

12 MS. McNALLY: Yes. We developed a framework.

13 Now, we had also been asked to provide a letter in the
14 Hydro One case, and so we had assessed the cases in that,
15 so the work we did for Toronto Hydro was an evolution of
16 our thinking from the Hydro One case.

17 MR. WARREN: So am I correct, then, Ms. McNally, that
18 -- and I am looking at your Exhibit K2.1, which is your
19 witness statement in this matter. You might turn it up, if
20 you've got it there.

21 On page 2 of 3, you list four -- I will describe them
22 as criteria. And my understanding was -- or framework of
23 analysis, however you want to put it. My understanding was
24 that the first time you developed those four was in
25 response to Toronto Hydro's request that you review its
26 evidence to see if there was duplication.

27 Have I got that right?

28 MS. McNALLY: Certainly we crystallized our thinking

1 about this and our approach in response to Toronto Hydro's
2 request.

3 MR. WARREN: Okay. And that was a crystallization, do
4 I understand it, of thinking that had begun when Hydro One
5 Networks had asked you to review its CDM programs?

6 MS. McNALLY: Yes. The first time, of course, any of
7 us had started thinking about the duplication issue was in
8 the Hydro One case.

9 And so the second request was the Toronto Hydro, and
10 with the benefit of the thinking under Hydro One and our
11 experience in that case, we were able to move our thinking
12 and formalize it a bit more -- crystallize it, not
13 formalize it -- into this purposive approach, in which we
14 identified four factors, and those are listed on page 2
15 of 3.

16 But certainly what we thought we distilled, we thought
17 the purposes of the rule against duplication were -- we
18 thought were four of them.

19 One, to ensure that we get incremental megawatts and
20 gigawatt-hours from the LDC programs, and to prevent any
21 undermining of the province-wide programs, was the first
22 purpose.

23 The second purpose we thought was to avoid marketplace
24 confusion.

25 The third was to ensure prudent use of ratepayer funds
26 by avoiding duplication of resources.

27 And the fourth -- and again, I am on page 2 of 3 now,
28 at line 13 -- capture regionally-specific opportunities.

1 So that was the approach we crystallized, and
2 certainly we're looking forward to guidance from the Panel,
3 to, we would imagine, an evolution after this hearing on
4 our approach.

5 MR. WARREN: Getting back to the questions I was
6 asking you, Ms. McNally, the evidence in this case is that
7 Toronto Hydro was part of a working group that had been
8 working with the OPA in the -- I don't have an exact
9 timeline from the testimony, but I am going to say
10 certainly the last quarter of 2010, had been working with
11 the OPA on the development of CDM programs.

12 Is that your understanding?

13 MS. McNALLY: We -- I am not sure how far back the
14 process goes. I know it goes back.

15 There was partnership between the LDCs and the OPA,
16 and starting in or about January 2010, a number of working
17 groups were created; a residential working group, a
18 commercial working group, an industrial, and a demand
19 response working group were developed to work jointly on
20 the development of the province-wide programs.

21 And that was a very fruitful, constructive process
22 that resulted in the province-wide programs that we have
23 today.

24 MR. WARREN: So getting back to the question I asked
25 you, Ms. McNally, my understanding is that some time at
26 least in the last quarter of 2010, the OPA was working
27 with, among others, Toronto Hydro on the development of the
28 province-wide programs, and my understanding was also

1 Toronto Hydro's programs.

2 Have I got that correctly? Or have I misunderstood
3 Toronto Hydro's evidence?

4 MS. McNALLY: To the best of my knowledge, the working
5 groups were only working on the province-wide programs.

6 MR. WARREN: Now, the evidence given yesterday by
7 Toronto Hydro's witness panels was that their programs --
8 which now form the substance of the application before the
9 Board -- were effectively complete at the end of December
10 2010, and that the OPA was aware of those programs as of
11 that date.

12 MR. VEGH: Perhaps Mr. Warren can identify where in
13 the evidence that is. That might help the witness.
14 Otherwise, he is just describing the evidence.

15 MR. WARREN: I am not describing the evidence, Mr.
16 Vegh. I am describing the testimony that was given
17 yesterday, and I don't have a particular reference to it,
18 but if there is any issue, I suppose Ms. McNally can
19 disagree with me.

20 MR. VEGH: Well, if you could point to the evidence,
21 then I think she would be in a position to understand what
22 the gist of the evidence is.

23 MR. WARREN: I just said what the gist of the evidence
24 was, Mr. Vegh, which was that Toronto Hydro testified
25 yesterday that as of the end of December of 2010, its
26 programs were effectively completed in the form in which
27 they have been filed with the Board, and that the OPA was
28 aware of them at that time.

1 MR. VEGH: Well, again, if you could point to the
2 evidence, that is helpful. Otherwise, it is in a bit of a
3 bind accepting your characterization.

4 Usually when you put someone else's evidence to a
5 witness, you let them look at that evidence.

6 MS. HARE: Mr. Vegh, I am sure we could get a
7 transcript reference in just a few minutes.

8 Mr. Wasylyk, do you have a transcript reference? It
9 would have been panel 1.

10 MR. WARREN: Sorry, I apologize. I don't have a copy
11 of the transcript with me.

12 MR. SOMMERVILLE: It appears the discussion follows
13 page 29.

14 Mr. WASYLYK: Page 29 is where it starts.

15 MS. HARE: Ms. McNally, do you have a copy of the
16 transcript?

17 MS. McNALLY: Yes, I do. Thank you.

18 MR. VEGH: Mr. Warren, if you could advise Ms. McNally
19 of the transcript reference you are referring to in your
20 question?

21 MR. WARREN: Well, I will in a minute, Mr. Vegh. If
22 you feel that that is absolutely necessary, then I will do
23 that.

24 MR. VEGH: Thank you.

25 MR. WARREN: We could move along a lot faster if the
26 witness could take it subject to check, Mr. Vegh.

27 MR. VEGH: Well, if you have a specific question that
28 doesn't involve her confirming what was in the evidence

1 yesterday, then you can ask the question that way.

2 If you are going to ask the witness to confirm what
3 was in the evidence, she is going to look at the evidence
4 first.

5 MS. HARE: I think the question was whether Ms.
6 McNally agrees with what we heard from Toronto Hydro
7 yesterday.

8 MR. SOMMERVILLE: Mr. Warren can put that proposition
9 to the witness, and then subject to further confirmation --
10 or as a proposition: If it was the evidence of the panel
11 that the programs were reviewed at December 2010, is that
12 consistent with her recollection?

13 I think that is -- would that satisfy the issue here?

14 MR. VEGH: Well, we're obviously in the Panel's hands.
15 If the Panel would like an answer to that question, I would
16 have thought it would be simpler to just ask if, in fact,
17 the OPA had reviewed the Toronto Hydro programs prior to
18 that time.

19 But if the Panel will find it -- would find it helpful
20 to have the proposition stated in the way that Mr.
21 Sommerville had proposed, of course the witness can answer
22 that.

23 MR. WARREN: Can we start, Ms. McNally, at page 135 of
24 yesterday's transcript?

25 It is an exchange I had with Mr. Tyrrell. Let's see
26 if this satisfies Mr. Vegh.

27 Beginning at line 9, my question:

28 "Now, as I understand the evidence that you gave

1 this morning, the evidence -- sorry, the
2 testimony you gave this morning, the actual
3 evidence in this case was delivered to the OPA
4 sometime in the early part of March of this year;
5 correct, Mr. Tyrrell?

6 ANSWER: Correct.

7 QUESTION: Now, between the time it was delivered
8 to the OPA and the letter of April 21, did you
9 have discussions with the OPA about the evidence?

10 ANSWER: Yes."

11 Okay? We can certainly agree, can we not, that after
12 March of this year, it was discussed between the OPA and
13 Toronto Hydro? Is that correct?

14 MS. McNALLY: Yes, absolutely.

15 MR. WARREN: Okay. And you cannot answer my question
16 whether or not the evidence which has been filed in this
17 case or the description of the Toronto Hydro programs were
18 known to the OPA between December of 2010 and the time the
19 evidence was delivered in March?

20 MS. McNALLY: What I can say is that once we received
21 the request from Toronto Hydro to review their programs in
22 March, we did so.

23 MR. WARREN: Now, prior to that time, there had been
24 discussions -- I take it that it was not until that time
25 that the OPA put its mind to whether or not there were
26 duplications between the Toronto Hydro programs and the OPA
27 programs.

28 MS. McNALLY: After we were requested for an opinion

1 from Toronto Hydro, we began a process internally to review
2 the programs and develop a response, as requested by
3 Toronto Hydro.

4 MR. WARREN: This is an important point, members of
5 the Panel.

6 I wonder if I could just take five minutes' time to
7 find the evidence, which is unequivocal on this point, but
8 if Mr. Vegh insists on it, I am going to find it.

9 May I do that, please? I apologize for taking the
10 time.

11 MS. HARE: Why don't we take a five-minute break?

12 MR. WARREN: Thank you very much.

13 --- Recess taken at 11:48 a.m.

14 --- On resuming at 11:53 a.m.

15 MS. HARE: Be seated. Please.

16 MR. WARREN: Thank you, members of the Panel, and I
17 apologize for not having a copy of the transcript with me.

18 Do you have a copy of the transcript in front of you
19 now, Ms. McNally?

20 MS. McNALLY: Yes, I do.

21 MR. WARREN: Could you turn to page 132, please,
22 beginning at line 9?

23 This is an exchange I had with Mr. Tyrrell.

24 "Question: And do I understand it correctly that
25 the components of the residential programs would
26 have been discussed with the OPA as part of the
27 working group that you participated in through
28 much of 2010? Have I understood that correctly?

1 "Answer: Correct.

2 "Question: And is it -- would it be a
3 reasonable conclusion on my part that any overlap
4 between the OPA programs, province-wide programs,
5 and the Toronto Hydro's residential programs
6 would have been apparent as of the end of
7 December 2010? Is that a reasonable conclusion
8 on my part?

9 "Answer: I would assume so, yes."

10 Now, I am going to go back to my question. Would you
11 agree with me -- would you agree with Mr. Tyrrell's
12 testimony that Toronto Hydro was aware of the contents of
13 their residential programs at the end of 2010 and was aware
14 of the overlap? Do you agree or not?

15 MS. McNALLY: So of course I can't speak for Toronto
16 Hydro, what they were aware, but at page 29 of the
17 evidence, Mr. Tyrrell comments that they had completed
18 their programs by December 2010. So I would assume if
19 their programs were completed, that they were aware of the
20 contents of their programs.

21 MR. WARREN: Was the OPA aware of the content of the
22 programs, Ms. McNally? Mr. Tyrrell seems to suggest that
23 in the exchange on page 132. Were they or were they not
24 aware of the content of those programs?

25 MS. McNALLY: I believe Mr. Tyrrell said he assumed
26 so, but that was all. So let me go back and say that the
27 working groups -- the residential working group, the
28 purpose and the focus of that working group was on the

1 province-wide programs and not on the tier 2/tier 3
2 programs, and that the OPA was asked, in March, to provide
3 an assessment on the duplication issue.

4 MR. WARREN: I'm sorry, I don't want to beat a dead
5 horse and this is the last time I will go at the old nag,
6 but my question was: Was the OPA aware of the residential
7 programs and the potential overlap as of the end of
8 December 2010? Yes or no?

9 MS. McNALLY: I guess I find it difficult to answer
10 that question, because I am not sure who the OPA is, in
11 what capacity. So, again, all I can say is that the
12 residential working group, I wasn't part of it. I don't
13 know what was discussed, but the purpose of the residential
14 working group was to develop the province-wide programs,
15 not the tier 2/tier 3 programs, Board-approved. Those were
16 up to each of the individual LDCs to develop on their own,
17 and that we were approached in March by Mr. Tyrrell for
18 Toronto Hydro and requested at that time that we provide an
19 assessment of the duplication at that time.

20 I was charged with responsibility and I began to work
21 on that.

22 MR. WARREN: Is it possible that somebody at the OPA
23 other than you would have been aware of the Toronto Hydro
24 programs and the potential overlap as of the end of
25 December 2010? Is that possible?

26 MS. McNALLY: I really can't speculate. Nowhere in
27 Mr. Tyrrell's evidence does he indicate that we were
28 provided with copies of the program in December 2010, so I

1 am unable to speculate on who might have known what.

2 MR. WARREN: Let's go to the next page of the
3 transcript, page 133. So I begin an examination of Mr.
4 Tyrrell on the question of what happened in what I will
5 call the gap period, which is January and February of 2011,
6 before the request was made to review the evidence.

7 Beginning at line 8:

8 "So is the answer to my question that there were
9 no discussions in that two-month period between
10 the OPA and Toronto Hydro about apparent overlaps
11 between the residential programs, province-wide
12 programs of the OPA and Toronto Hydro? Is that
13 fair, no discussions?

14 "Mr. Tyrrell: Sorry, the discussion was
15 essentially -- we had a discussion of potential
16 overlaps, but we didn't conclude that either
17 party concluded that these were overlaps that we
18 were going to avoid or adjust the program. We
19 felt that they weren't overlaps and these were
20 complementary or incremental programs.

21 "Mr. Warren: And is it your evidence that the
22 OPA agreed with that? I'm talking about the two-
23 month period from the time your programs were
24 finalized and the delivery of the evidence to the
25 OPA at the beginning of March.

26 "Mr. Tyrrell: It would be safe to say that the
27 OPA assumed that these components would be
28 covered under PAB, as their statement suggests."

1 Now I read that - you correct me if I am wrong, Ms.
2 McNally - that there were discussions in the two-month gap
3 period between the OPA and Toronto Hydro about the
4 residential programs, that the overlaps between the
5 programs were identified and discussed. Are you prepared
6 to agree with that?

7 MS. McNALLY: I don't mean to be difficult, but as I
8 read -- as I followed as you read Mr. Tyrrell's evidence, I
9 assumed that he was talking about the period in March and
10 April when -- after we were approached, and we were having
11 discussions between the OPA and Toronto Hydro on the
12 overlap. That is certainly how I read the evidence there.

13 MR. WARREN: Well, the transcript will speak for
14 itself, Ms. McNally, but I just -- are you in a position to
15 agree or disagree that the programs, the residential
16 programs, and potential overlap were discussed in the
17 period between December of 2010 and March of 2011? Yes or
18 no? If you are not in a position to say so, that's fine.

19 MS. McNALLY: I am only in a position -- I am not in a
20 position to comment on the period January to March. I can
21 comment that once we received a request from Mr. Tyrrell to
22 provide an opinion, we did have discussions back and forth
23 with Toronto Hydro on the topic, and we ultimately issued
24 the letter of April 21st.

25 MR. WARREN: Let's get to those discussions, then.

26 You referred a moment ago, in response to one of my
27 questions, to what you called the rule on duplication. Do
28 you remember giving that testimony a few moments ago? You

1 referred to it as the rule on duplication.

2 MS. McNALLY: I believe I was referring to the
3 provision in the code, and I may have used loose language,
4 but I was referring, in 2.3, 2.3.2:

5 "Distributors shall not apply for Board approval
6 of CDM Programs that duplicate existing..."

7 MR. WARREN: I don't think anybody would accuse you,
8 Ms. McNally, of ever using loose language. It was your
9 term, "rule on duplication", but let's leave it aside as a
10 matter of choice of vocabulary.

11 I am going to put this proposition to you and ask for
12 your response. I find it surprising - and I would ask if
13 you would agree with this - surprising that given the
14 Minister's directive, which speaks about duplication, and
15 the Board's CDM Code, that the OPA did not put its mind to
16 the analytical framework for assessing duplication until
17 asked to do so by Toronto Hydro.

18 Why would you have taken more than a year from the
19 Minister's directive to develop those -- that analytical
20 framework, given it was a rule?

21 MS. McNALLY: The OPA and the LDCs, as you can
22 imagine, were very busy in 2010 developing the new set of
23 programs. That was certainly a major focus of our
24 attention.

25 As I mentioned earlier in my evidence, when the
26 Toronto Hydro proceeding began, we were requested for a
27 letter from them. So clearly that was the first time we
28 were asked to address the issue. So we began to think

1 about the issue.

2 At that point, as I indicated in my evidence, our
3 thinking, then, after that experience, we evolved our
4 thinking somewhat and crystallized into this purposive
5 approach, and again looked forward to guidance from this
6 Panel so that, in assessing, if we are asked to do this
7 again in the future, we will have a better guide to go by.

8 MR. VEGH: I'm sorry, just for clarification, I don't
9 like to interrupt, but you mentioned the first Toronto
10 Hydro request. I believe your earlier evidence was the
11 Hydro One request. Is that correct?

12 MS. McNALLY: Yes. Thank you. The first request was
13 from Hydro One, and the second from Toronto Hydro.

14 MR. WARREN: Does the OPA regard it as its role or
15 obligation, if you wish, to assess LDC programs to
16 determine what -- LDC programs seeking Board approval --
17 does the OPA regard it as its function to assess each of
18 those applications for duplication?

19 MS. McNALLY: No, we do not see it as our function.
20 We see that as the function of the Board to make a
21 determination on duplication.

22 MR. WARREN: When you were asked to do so by Toronto
23 Hydro, you did make an assessment, and the assessment is
24 reflected in Mr. Pride's letter of April 21; correct?

25 MS. McNALLY: That is correct. We provided an opinion
26 on duplication, and in the cases of the programs we have
27 called 1 to 4, we did not provide an opinion, and in the
28 cases of 5 to 9, we provided our opinion, as well as

1 suggested some conditions that we thought would make the
2 programs not duplicative.

3 So we saw ourselves as -- we don't have the authority
4 to make this decision, but we were providing some guidance
5 and advice, some suggestions to Toronto Hydro as a guide to
6 avoiding duplication.

7 MR. WARREN: Well, when a person uses the term
8 "conditions", Ms. McNally, conditions for what? Conditions
9 for the OPA's approval, OPA signing off on whether or not
10 these are duplicative, or conditions the Board should apply
11 to them, impose on these?

12 You chose the word "conditions"; what did you mean by
13 it?

14 MS. McNALLY: Certainly we did indeed use the word
15 conditions, and on the second page of Mr. Pride's letter,
16 which is K1.1, we've set out the conditions.

17 So these were our recommendations to Toronto Hydro, and
18 they include:

19 "Deliver the programs in a way that enhances the
20 overall effectiveness of the province-wide
21 programs."

22 And here I am reading that first bullet point on the
23 second page:

24 "Work with the OPA to adopt these programs, where
25 cost-effective, into province-wide programs."

26 And third:

27 "Align its program delivery, including
28 harmonizing dispatch, with the province-wide

1 programs."

2 MR. WARREN: In the absence of these conditions, what
3 would the opinion of the OPA be on these five programs, 5
4 through 9? That they're duplicative? That the Board
5 shouldn't approve them?

6 MS. McNALLY: Our opinion was -- the opinion we offer,
7 which is in the letter, that is an integral part of our
8 opinion.

9 MR. WARREN: Sorry, that doesn't answer my question.

10 MS. McNALLY: So we didn't -- this was the opinion we
11 offered. We don't have a separate opinion.

12 MR. WARREN: Well, I am trying to understand what you
13 mean by the term -- by the concept of conditions, as used
14 in this letter. Is it the case that absent these
15 conditions, the OPA would, A, find these programs 5 through
16 9 are duplicative or not?

17 MS. McNALLY: I guess what I am saying is we spend a
18 fair amount of time thinking about this, and this is how we
19 have represented -- presented our final opinion on this.

20 MR. WARREN: I didn't mean to suggest that you did it
21 in a heartbeat, Ms. McNally, but let me come back to that
22 dead horse and flog it one more time.

23 If these conditions are not -- if the conditions which
24 you have posited in this letter are not either accepted by
25 Toronto Hydro or imposed by the Board, does the OPA have a
26 position on whether or not these programs 5 through 9 are
27 duplicative?

28 MS. McNALLY: I don't have a position on that now. We

1 could take it away and re-look at them.

2 But again, we presented the letter with our thinking
3 here as a whole. And if we take out a piece of that, I am
4 not in a position to provide a quick response. We'd have
5 to go back and take a look and reassess on our purposive
6 approach.

7 MR. WARREN: Mr. Chairman and -- Madam Chair, members
8 of the Panel, we're in something of a box on this matter.

9 I can ask, I suppose, for an undertaking on this, but
10 -- to do just that, but the problem is it would require,
11 essentially, a re-attendance in this matter.

12 But it strikes me, with respect, that this is a
13 fulcrum issue, on which the Board has to turn its mind.

14 [Board Panel confers]

15 MS. HARE: The Panel is not prepared to ask for an
16 undertaking.

17 We, though -- I will just interject -- would like for
18 Ms. McNally to be a bit more specific as to what exactly
19 are the conditions for each of the programs.

20 MS. McNALLY: Would you like me to go through each of
21 the remaining bullet points?

22 MS. HARE: Yes, please.

23 Mr. Warren, I am jumping in, but we'll return to you.

24 MR. WARREN: That's your prerogative, and I am not
25 going to quarrel with it, Madam Chair.

26 MS. McNALLY: So the first bullet point was setting
27 out at a high level the kind of alignment that OPA would
28 like to see.

1 Then if we get into the details -- so the next bullet
2 is the commercial, institutional, small industrial
3 monitoring and targeting, and we set out a little
4 description of it, and note that monitoring and targeting
5 for this commercial, institutional and small industrial
6 sector is not currently offered in the province-wide
7 programs, so...

8 MS. HARE: So are you saying it doesn't duplicate --

9 MS. McNALLY: It doesn't duplicate. There is no
10 existing -- there is monitoring and targeting for the large
11 industrial, but not for this sector.

12 MS. HARE: There is no condition attached to that,
13 other than the general condition attached to the delivery
14 of the programs, which is in the first bullet?

15 MS. McNALLY: That's correct. Again, to -- to enhance
16 the overall effectiveness of the province-wide.

17 It's conceivable, if this program were very effective,
18 that we might want to be in discussions about making this a
19 province-wide program, but that wasn't a specific condition
20 in this case.

21 MR. SOMMERVILLE: That was my question, as to whether
22 the condition for this -- whether a condition for this
23 particular program, not being duplicative, was it that it
24 was not currently offered?

25 MS. McNALLY: That's correct.

26 MR. SOMMERVILLE: And that's correct? Okay.

27 MS. McNALLY: Yes.

28 MS. TAYLOR: But solely to that customer class or

1 classes?

2 MS. McNALLY: That's correct. There is a monitoring
3 and targeting as part of the industrial, the large
4 industrial program, but not for the small industrial or the
5 commercial or institutional.

6 MS. TAYLOR: Okay.

7 MS. McNALLY: Second, on the flat-rate water heater
8 conversion, you heard evidence from Toronto Hydro this
9 essentially has two components.

10 There is the flat-rate water heater conversion piece,
11 and then a peaksaver piece.

12 And this is an area -- the first piece, there isn't a
13 similar product or service currently offered in the
14 province-wide program, so that is non-duplicative.

15 On the second piece, the peaksaver, there is obviously
16 a peaksaver program. And so Toronto Hydro had agreed, as
17 noted in the paragraph here, to subtract the funding
18 related to peaksaver from this program.

19 So although they will use the peaksaver savings in
20 their TRC and PAC analysis, as I think the panel mentioned
21 earlier this morning, for the purposes of funding and
22 delivery, that stuff is carved out and runs through the
23 peaksaver program.

24 So the flat-rate water pieces -- isn't currently
25 offered.

26 So on the third program, what we've noted here, this
27 is multi-unit residential DR. The MURB DR is unique and
28 focussed on high-density applications, and the program

1 integrates concepts of peaksaver and commercial demand
2 response into a single program, which creates the
3 uniqueness here.

4 Certainly there was some discussion this morning about
5 -- sorry, there's a later conversation. So the MURB DR, we
6 felt because of the packaging of peaksaver and commercial
7 DR and this focus on this unique market, if you go back to
8 our purposive approach, we thought this captured
9 regionally-specific opportunities, the MURB sector in
10 Toronto, that it provided incremental value by bringing
11 together these program elements to test out a new variation
12 on it.

13 MR. SOMMERVILLE: It may be appropriate just to ask
14 the question here.

15 You say that the multi-unit residential building
16 aspect was a regionally-specific aspect here.

17 Now, they have multi-unit residential buildings in
18 London, Ontario?

19 MS. McNALLY: Yes, absolutely. But Toronto is one of
20 the highest concentrations of MURBs, so we felt this was a
21 suitable for this market.

22 MR. SOMMERVILLE: So the quantity -- would other
23 cities qualify, bringing this -- in your view, would other
24 cities qualify bringing this view, simply because they have
25 a certain critical number of multi-unit residential units?

26 MS. McNALLY: Certainly I think it is conceivable that
27 other utilities could come forward with a similar program.

28 MR. SOMMERVILLE: Thank you.

1 MS. TAYLOR: Just before we leave this, you had said
2 that what is unique is the bundling. So do these two
3 program elements, in your opinion, exist within the OPA
4 offering for province-wide?

5 MS. McNALLY: So certainly multi-unit residential
6 buildings could participate in the DR suite of programs.

7 What we've heard from Toronto Hydro is they're finding
8 that their MURB customers are not participating
9 significantly in the DR 1 and DR 3. And so they put
10 together a new offering, essentially, in the hopes that
11 that will attract more of the MURB sector.

12 So again, going back to the purposive approach, we saw
13 that as potentially generating incremental megawatts. That
14 was our first...

15 MS. TAYLOR: But you don't dispute that those two
16 programs exist within the flexibility approach --

17 MS. McNALLY: Certainly --

18 MR. TAYLOR: -- flexible framework that the OPA is
19 offering, and that there is no prohibition or barrier to
20 bundling the two offerings that the OPA has and putting
21 them into -- that the customer, in your design, could, in
22 fact, utilize both of these projects?

23 MS. McNALLY: Let me just take -- to clarify, when we
24 say "bundling" it is not that it is a bundling of the
25 peaksaver and the commercial DR.

26 It is -- I think the sentence was the program
27 integrates the concepts. So it is a new program, pulling a
28 little bit of the concept of peaksaver and a bit of the DR.

1 So it is not that we bundled -- that they bundled
2 those two things together; it is that they have integrated
3 the concepts to create a third piece, A.

4 And then B, so yes, there is nothing prohibiting MURBs
5 from participating in the DR programs that are part of the
6 province-wide programs.

7 The issue here is Toronto Hydro has said they're not
8 getting MURB participation. So by creating a unique -- a
9 special product for them, we expect to get new participants
10 in. So going back to the purposive approach, we felt that
11 would increase -- it would be incremental megawatts without
12 compromising the DR suite.

13 And here is kind of where the conditions play in, that
14 the Toronto Hydro has agreed that when they go out to
15 customers, they will deliver the programs in a way that
16 enhances the overall effectiveness of province-wide suites,
17 so that they will work with their customers to say, Here
18 are your options, let's find the one that works best for
19 you.

20 It could be a province-wide program or it could be
21 this unique one, so that there will be an approach that
22 promotes all of the programs, rather than trying to
23 cannibalize them.

24 So we felt with that agreement that we wouldn't have
25 customer confusion. That was our second concern. So the
26 alignment, the enhancing of the delivery would avoid any
27 customer confusion.

28 MS. TAYLOR: Thank you.

1 MS. McNALLY: So the fourth program, then, was the
2 hydronic system balancing. And so you can see from our
3 little description there, the program targets a niche
4 opportunity within the MURB sector that is not currently
5 specifically targeted in the ERII program. And the work
6 done by Toronto Hydro on the proposed program could allow
7 the OPA to introduce an engineered worksheet.

8 I can give a little more information on that at a
9 future date. And Toronto Hydro has agreed to work closely
10 with the OPA on that, with the expectation that a
11 specialized worksheet may increase the participation in the
12 province-wide programs.

13 So let me maybe comment on a few pieces of that. I
14 was here earlier today and heard the discussion about the
15 hydronic balancing. So it is true that the hydronic
16 balancing is not just targeted at the MURB, but certainly
17 that is an area where there is hydronic systems.

18 And so, again, going back to the comment about Toronto
19 has a great number of these MURBs, we saw that as a nice
20 niche offering for that sector. So we weren't trying to
21 suggest it was only targeted at the MURBs. But in Toronto,
22 with its high density of multi-residential programs, we
23 thought that was an appropriate niche market to go after.

24 MS. HARE: Would you consider this a pilot program?

25 MS. McNALLY: I am worried about using "pilot". I
26 don't think -- pilots we tend to think of as ideas that
27 have never really been tried, like really kind of cutting-
28 edge ideas; whereas I think this is bringing together

1 existing tools into a new variation.

2 In particular, I think the witnesses this morning
3 talked about the assessment. Certainly part of this
4 offering is an upfront kind of risk-free assessment, so an
5 offering to building owners to get an assessment of the
6 hydronic systems with an incentive, and then if they decide
7 not to proceed, there is no risk of losing the incentive.
8 That is kind of a new offering we saw.

9 So it is not that it is pilot, but I think it is
10 testing a new combination of materials that certainly, if
11 it were effective again, it is the kind of thing you might
12 want through the change management process to bring up to a
13 tier 1.

14 I mean, we really see this as a partnership with the
15 LDCs and the OPA looking for the best program ideas, and
16 we've got a suite out, but we're always -- we have a change
17 management process to learn new lessons.

18 MS. HARE: And the fifth program, then?

19 MS. McNALLY: The fifth program, the commercial energy
20 management and load control, again, this program has two
21 pieces, as the witness this morning talked about. There is
22 an energy management piece and the load control piece.

23 As we say in the letter, the small commercial market
24 demand response program is planned for a future iteration
25 of the province-wide programs. Currently, small commercial
26 are entitled to participate in the peaksaver, but what
27 we've been finding is there is not a great amount of pickup
28 in that sector from the program.

1 So there was a commitment by both the OPA and the LDCs
2 to begin to work on a product that really meets the needs
3 of those communities, and so very helpfully Toronto Hydro
4 has come forward to basically begin to frame up a product.

5 And so in this case, Toronto Hydro's commitment is to
6 work -- is to build the program, and then to test the
7 elements, and then work with OPA and other LDCs to turn
8 this into a province-wide program.

9 I should also say that the energy management piece
10 isn't offered. In the existing peaksaver, there is no
11 energy management piece.

12 MS. HARE: I have one last question before I turn it
13 over to Mr. Warren.

14 You have mentioned several times that there is
15 agreement by Toronto Hydro, and, in fact, your letter at
16 the end of page 1 talks about conditions which have been
17 agreed to by Toronto Hydro.

18 Now, do you have something in writing from Toronto
19 Hydro that they agreed to this, or when did the discussions
20 take place that by the time you wrote the letter you
21 already knew you had agreement from Toronto Hydro?

22 MS. McNALLY: So we don't have a formal letter of
23 agreement, but we went -- in that period between March and
24 April that I thought Mr. Tyrrell was talking about in his
25 evidence, that is when we discussed these issues.

26 And in that process, Toronto Hydro agreed with the
27 conditions that we have set out in the letter.

28 MS. TAYLOR: Sorry, I just need to ask a follow-on,

1 with respect.

2 So this application was filed quite a bit of time
3 before that. So what you're saying, as it relates to
4 programs 5 to 9, is that subject to the conditions about
5 how Toronto Hydro implements.

6 And a lot of these projects are parts of things that
7 the OPA does and they bundled them differently, put
8 different elements, not the whole thing; as you have
9 described it, not a bundling, but taken certain elements
10 from these programs and put them together in a new and
11 unique way. Subject to implementing them in this way, you
12 are finding that they're not necessarily duplicative.

13 But that implies a certain amount of coordination
14 between you and Toronto Hydro that doesn't fit with the
15 timeline, if you only started talking about these projects
16 or programs in March.

17 This application with these things was filed before
18 that.

19 So can you reconcile how we've done some very specific
20 design work to extract certain things from the OPA
21 programs, certain elements, bundle them and put them
22 together in a new and unique way, as you have said, and
23 then file it with the Board, but prior to these
24 discussions?

25 So you have obviously been speaking to them, to THESL,
26 the applicant, before this, and then, you know,
27 crystallizing your decision framework, I suppose, to
28 produce this letter.

1 Can you please address this issue with the timeline
2 and when conversation did or did not occur, because there
3 seems to have to be a certain amount of it to produce such
4 finely-tuned and balanced, if I can describe them that way
5 -- to meet the criteria that you have established.

6 MS. McNALLY: So the conversations were all between
7 March and April. And you will notice that the conditions -
8 again, the bullet point, the first bullet point on page 2,
9 kind of captures them. They're all about implementation,
10 so they're not design issues.

11 So Toronto Hydro came to us with programs that were
12 designed, and I think the fact that they -- I forget your
13 words, but they were so carefully crafted speaks to the
14 work that Toronto Hydro has done and that they did develop
15 these programs with reference to the province-wide
16 programs.

17 Toronto Hydro would have been aware of the content of
18 the province-wide programs, because they were very actively
19 involved in the process of designing them.

20 So we weren't involved in their program design
21 process, and the discussions that led to these conditions,
22 which are all program implementation conditions, occurred
23 between March and up to April 21st.

24 MS. TAYLOR: So then to clarify, if they do not
25 implement them in the manner that you are reflecting in the
26 letter, then they could in fact be duplicative; is that
27 fair?

28 MS. McNALLY: So commercial M&T, there would be no

1 duplication, and the flat-rate water heater. The other
2 three, I think it is -- it is important, and, again, I want
3 to take a step back and just say the province-wide programs
4 are very flexible.

5 So in order to deliver tier 2 and tier 3 programs in a
6 way that are not duplicative, there has to be coordination,
7 I think, and cooperation.

8 And I just -- I don't know whether it is up to the
9 Board to determine that, but I think we have designed the
10 programs to be flexible to meet many needs, and...

11 MR. SOMMERVILLE: How would we determine that if we
12 don't know the details of the implementation nuances that
13 you have developed with Toronto Hydro?

14 If we hadn't requested some measure of clarity from
15 OPA with respect to whether these are duplicative or not,
16 how would we -- how would we make an informed decision on
17 the basis of a record that is uninformed by this and is
18 uninformed by the nuances of the implementation strategies
19 that you have so assiduously worked out with Toronto Hydro?
20 How would we make that determination?

21 MS. McNALLY: I think that is a good question. I
22 think we are all learning in this process. This of course
23 is the first hearing on this matter, and so it may be that
24 the lessons learned from this are that -- well, anyway, I
25 think we're all learning from it, and I am sure that the
26 next application will have more information of this kind.

27 MR. SOMMERVILLE: And would you expect OPA to be a
28 relatively -- in this case -- and I don't mean any

1 disparagement of any kind, believe me -- but in terms of
2 being an active participant, in terms of being -- providing
3 some genuine clarity for the Board, in terms of
4 understanding how these programs are actually going to
5 work, when those nuances are important from the standpoint
6 of duplication of programs, do you expect OPA would take on
7 that role in subsequent applications?

8 MS. McNALLY: There would -- there would likely be
9 many ways of doing this, but I suggest that one way, and
10 perhaps a preferable, would be the LDC applicant to address
11 those sorts of issues in their evidence, perhaps based on
12 conversations with us.

13 But again, I see this as this is an LDC coming to this
14 Board...

15 MR. SOMMERVILLE: In this case, we did have those
16 discussions, but we didn't have, necessarily, a record
17 before the Board from an evidentiary point of view as to
18 what the nature of those discussions were.

19 And the way we got to that was filing on April the
20 21st of a letter from Mr. Pride, where those nuances --
21 which are, as you have indicated, important -- were
22 delineated.

23 So would you see, somewhere in the process, OPA taking
24 a more direct role in ensuring that the filings that are
25 made are properly informed by your input as to where your
26 programs begin and these end?

27 MS. McNALLY: I think we're certainly happy to speak
28 with LDCs as they prepare their applications, to provide

1 this kind of advice and guidance, absolutely.

2 MR. SOMMERVILLE: We certainly got that discussion in
3 this case, but we didn't necessarily get the outcome until
4 this letter arrived.

5 MS. McNALLY: Yes. As we all learn through this
6 process, I hope that this kind of discussion happens
7 earlier.

8 MR. SOMMERVILLE: Thank you.

9 MR. VEGH: Mr. Sommerville, if I may respond, as you
10 can appreciate, I am sure, the witness is uncomfortable
11 stating what would be the OPA's going-forward policy, and
12 as the Panel is aware, there are many instances and filing
13 guidelines say, for example, in transmission planning or in
14 distribution planning where the OEB requires as part of the
15 filing material that the OPA provide its opinion or its
16 evidence, and the OPA has always done that.

17 I think what the witness is saying is in this case, we
18 didn't have a lot of guidance. So it's difficult for the
19 OPA to say what its role is in an OEB proceeding. I think
20 the OEB would provide that direction, and of course the OPA
21 will --

22 MR. SOMMERVILLE: Just for absolute clarity, let me
23 confirm that this is not in any way a criticism of OPA and
24 what it's doing with respect to this.

25 What it is is an expression of perhaps a little
26 concern on the Board's part, about the -- about assuring
27 that when we get applications of this nature, that they are
28 fully informative about the state of these programs, root

1 and stock, so that we are not fishing around trying to
2 figure out what the OPA program is and what the utility
3 program is.

4 It is not a criticism of the applicant in this case.

5 This fishing-around aspect, where we are trying to
6 discern -- we have a directive, to which we are subject,
7 which requires us to not approve duplicative programs.
8 That is the full stop. That is an absolute prohibition on
9 the Board's jurisdiction.

10 So we cannot approve programs that are duplicative.
11 And in order to determine that, the Board needs a fully
12 informed record, not a record that pieces in one dribble at
13 a time or one -- or a record that is -- pardon the second
14 use of this term -- nuanced, to avoid a direct comparison.

15 But a clear record that is properly informed, it is
16 absolutely essential to this process. And this process
17 can't go forward without that.

18 We have a directive that binds our jurisdiction. It
19 is as simple as that.

20 So it is not a criticism of OPA, not a criticism of
21 the applicant.

22 Simply, as we go forward, these issues have got to be
23 dealt with definitively.

24 MS. HARE: And with that, we are going to take our
25 lunch break.

26 And Mr. Warren, we will return with your cross-
27 examination at 1:30.

28 --- Luncheon recess taken at 12:28 p.m.

1 --- On resuming at 1:39 p.m.

2 MS. HARE: Please be seated.

3 Mr. Warren, if you could resume your cross, please?

4 MR. WARREN: Thank you. Ms. McNally, I apologize for
5 going over, I hope just briefly, some ground I covered
6 before, but I just want to make certain that there is no
7 uncertainty about this.

8 And in this context, could you turn up yesterday's
9 transcript at page 133, please?

10 MS. McNALLY: Yes.

11 MR. WARREN: Now, you remember that I talked about the
12 time period from December to March, and at line 21 on page
13 133, I specified that the two-month period was from the
14 time the Toronto Hydro had finalized its programs and the
15 beginning of March, and then following that, Mr. Tyrrell
16 and I have an exchange about what position the OPA took on
17 the programs.

18 Have I correctly understood your evidence that you
19 have no direct knowledge about that period from December to
20 March; is that correct?

21 MS. McNALLY: I have no direct knowledge of
22 conversations between Toronto Hydro and the Ontario Power
23 Authority about overlaps in the period December to March;
24 that is correct.

25 MR. WARREN: Okay. Now, I've shown you just a moment
26 ago a document which is on the public record, and it is --
27 appears to be the Ontario Power Authority's letter of
28 intervention in this proceeding.

1 Could that be marked as an exhibit?

2 MR. MILLAR: Yes. Exhibit K3.3.

3 **EXHIBIT NO. K3.3: LETTER DATED FEBRUARY 7, 2011 FROM**
4 **ONTARIO POWER AUTHORITY.**

5 MR. WARREN: Ms. McNally, could you confirm, please,
6 for the record that this is the Ontario Power Authority's
7 letter of intervention or seeking intervention status in
8 this application?

9 MS. McNALLY: I cannot confirm that. I can look at
10 the letter and tell you that it is Ontario Power Authority
11 letterhead, and I can tell you that Karen Frecker is indeed
12 the manager of regulatory proceedings.

13 MR. WARREN: Would you have had any role at all in the
14 decision to intervene in this application?

15 MS. McNALLY: No, I had no role. At that time I was
16 not in the position of the director, market transformation.

17 MR. WARREN: The second paragraph of the letter reads
18 as follows:

19 "Since its inception, the OPA has played a key
20 role in designing and delivering conservation and
21 demand management ('CDM') programs. On April 23,
22 2010, the Minister of Energy and Infrastructure
23 issued a directive to the OPA outlining the
24 requirements for strategic coordination of CDM
25 programs with distributors and the Board. The
26 OPA's interest in this proceeding is with respect
27 to its role in coordinating and facilitating the
28 successful implementation of the new CDM

1 opportunities provided to LDCs through the Green
2 Energy and Green Economy Act, 2009."

3 Now, that statement that I have just read appears to
4 evidence an interest by the OPA to actively participate in
5 this application. Is that a fair interpretation on my
6 part?

7 MS. McNALLY: I believe that statement is a direct
8 quote out of the cited directive, and the quote comes - I'm
9 sorry, I'm not sure if the Board has the directive of April
10 23rd, 2010 from the Ministry to Colin Andersen. I am not
11 sure if that is an exhibit in this case.

12 MR. WARREN: Let's assume that it is a direct quote.
13 What I am trying to get at, Ms. McNally, is you are here as
14 the witness for the Ontario Power Authority in this
15 proceeding.

16 Can you tell me, was it the intention of the OPA to
17 actively participate in this proceeding?

18 MS. McNALLY: So as I mentioned, I wasn't involved at
19 the time, so I can't speak to what the intention was.

20 As I said, I got involved in the case in March when I
21 was asked to coordinate our response to Toronto Hydro's
22 letter.

23 MR. WARREN: Now, in the ordinary course of the
24 Board's processes when a party intervenes, one of the
25 things that follows on the delivery of an intervention is
26 the delivery of the prefiled evidence to the intervenor.
27 Do you understand that to be the case, or can you take it
28 subject to check?

1 MS. McNALLY: The last line in the letter says,
2 "Please provide a copy of all relevant communications",
3 so...

4 MR. WARREN: Can you take it subject to check that the
5 OPA would have received the evidence, prefiled evidence, in
6 response to this letter of intervention? Can you take that
7 subject to check?

8 MS. McNALLY: Yes. I mean, I assume if we had
9 requested to be involved, that we would have received it,
10 but I can certainly check that we did indeed receive the
11 material.

12 MR. WARREN: Okay. But you can't help us out today in
13 indicating whether or not or to what -- the nature of the
14 role the OPA intended to play in this proceeding on the
15 basis of this letter of intervention? You can't help me
16 out with that; is that fair?

17 MS. McNALLY: So I wasn't involved and I don't think I
18 can glean that. Again, the letter seems to have a direct
19 quote from the directive, and then when you go to the
20 directive, it provides more detail about the role of the
21 OPA, which includes -- and, again, I'm sorry, I'm not sure
22 if the Board has --

23 MS. HARE: It's not in evidence. As it turns out, we
24 do have the letter before us. Maybe we should mark it as
25 an exhibit.

26 MS. McNALLY: Sorry, the letter or the directive?

27 MS. HARE: We have the April 23rd -- I think it is
28 direction to Mr. Andersen.

1 MS. McNALLY: And so you will see in this page 2, the
2 second paragraph --

3 MS. HARE: Mark this as an exhibit, Mr. Millar.

4 MR. MILLAR: Yes. I don't have the document --

5 MS. HARE: I don't know if you have copies.

6 MR. MILLAR: It is the letter dated April 23rd to Mr.
7 Andersen from the Ministry of Energy, and that would be
8 K3.4.

9 **EXHIBIT NO. K3.4: LETTER TO COLIN ANDERSEN, OPA, FROM**
10 **BRAD DUGUID, MINISTER OF ENERGY AND INFRASTRUCTURE,**
11 **DATED APRIL 23, 2010.**

12 MR. WARREN: The reason I asked the question, Ms.
13 McNally, is that one of the questions I put to you this
14 morning was whether or not the OPA felt it had a role to
15 play in reviewing the LDC applications for approval of CDM
16 programs, and your answer to me was, no, it did not.

17 And I am going to suggest to you that their
18 intervention and the wording of this intervention is to the
19 contrary; that the OPA does regard itself as having a role
20 to play in the applications of LDCs for approval of CDM
21 programs. Is that not fair?

22 MS. McNALLY: So I don't recall the exact words I
23 used, but perhaps I can clarify.

24 It's our view that it is the responsibility of the
25 Board to make determinations regarding duplication under
26 the code, (a); (b) when Toronto Hydro approached us for our
27 opinion on whether or not the programs were duplicative,
28 we, as you know, were happy to provide our thoughts on

1 that.

2 MR. WARREN: Ms. McNally, let me go back to the
3 exchange that you and I had this morning. We don't yet
4 have a transcript, but my question to you was: Did the OPA
5 feel it had a role to play in reviewing the LDC
6 applications for approval of CDM programs? Your answer was
7 an unequivocal "no".

8 I'm suggesting to you that your intervention in this
9 application, before the March request from the Toronto
10 Hydro, is inconsistent with the answer that you have no
11 role to play. Would you agree with that?

12 MS. McNALLY: No. We clearly have an interest this in
13 this proceeding. So at minimum, we would participate to
14 monitor and receive the materials. I can't comment on -- I
15 wasn't involved, so I can't comment on the exact strategy.

16 And certainly the text of the letter is simply
17 language from the code. Certainly as I compare the
18 sentences, (a); and then (b), my comment about a role, my
19 answer to you earlier was that in our view it is the --
20 it's the Board's jurisdiction to make a decision on
21 duplication; and (c), again, clearly we were asked by
22 Toronto Hydro to provide our opinion, and we did provide
23 that.

24 MR. WARREN: Can you tell me this? Is it the
25 intention of the OPA to intervene in the applications of
26 all of the LDCs who may seek approval from the Board for
27 CDM programs?

28 MS. McNALLY: I can't comment on what our intention is

1 going forward, but it is my -- it is my understanding that
2 we intervened in Hydro One's case, but I would have to take
3 that subject to check, because I wasn't involved at that
4 point. And, clearly, we intervened in this proceeding.

5 MR. WARREN: Now, let's take it to the period when --
6 from the early part of March to April 21. That's the
7 period during which -- at the beginning of which Toronto
8 Hydro asked you to review its evidence in this proceeding.
9 Can we agree on that?

10 MS. McNALLY: Yes. Asked us to provide an opinion on
11 whether or not the programs were duplicative, yes.

12 MR. WARREN: Was there a formal request from Toronto
13 Hydro asking for your opinion? When I say "formal
14 request", was there a written request from Toronto Hydro to
15 ask for an opinion?

16 MS. McNALLY: It's my understanding that a request was
17 made by Mr. Tyrrell to Andrew Pride via e-mail. I'm not
18 aware if there was also a telephone conversation around
19 that.

20 MR. WARREN: And is that e-mail request, to your
21 knowledge, is it part of the record in this case?

22 MS. McNALLY: I have no knowledge about that.

23 MR. WARREN: Okay. Would you undertake to provide a
24 copy of that e-mail request?

25 MR. VEGH: Madam Chair, we do have concerns about
26 producing e-mail correspondence between the OPA and Toronto
27 Hydro.

28 It's not clear that that is at all relevant to the

1 issues that the Board has to decide here, particularly
2 whether or not there is -- to the OPA's -- to the extent of
3 the OPA's involvement, which is a substantive issue of
4 whether or not there is duplication.

5 The OPA has provided its views on that. They're
6 available here for cross-examination on that point.

7 I suggest that the probative value of digging into all
8 communications between the OPA and Toronto Hydro doesn't
9 shed a lot of light on that issue, and in fact, it is not
10 typically the Board's practice to require, you know,
11 communications respecting the preparation of evidence.

12 So we object to the undertaking, and we don't propose
13 to provide it.

14 MS. HARE: Give us a moment, please.

15 [Board Panel confers]

16 MS. HARE: I didn't hear Mr. Warren ask for all
17 correspondence. I heard him ask about the particular
18 request, in terms of reviewing the programs. And the Board
19 is interested in seeing what exactly it was that Toronto
20 Hydro asked the OPA to do.

21 MR. VEGH: Thank you. So we will provide that -- we
22 will provide whatever we have on that request that is in
23 writing.

24 MS. HARE: Thank you.

25 MR. MILLAR: J3.4.

26 **UNDERTAKING NO. J3.4: TO PROVIDE COPIES OF WRITTEN**
27 **COMMUNICATION BETWEEN TORONTO HYDRO AND THE OPA, AS**
28 **REFERENCED.**

1 MR. WARREN: Ms. McNally, following that request,
2 there were, as I understand your evidence and the written
3 record in this case, discussions between Toronto Hydro and
4 the OPA with respect to whether or not some or all of its
5 nine programs were duplicative; is that correct?

6 MS. McNALLY: Yes. As I set out in the witness
7 statement, we had -- and here I am referring to page 1,
8 lines 16, 17, 18 -- we had several discussions with Toronto
9 Hydro, to both -- to gain a better understanding of the
10 programs and to address the duplication issue.

11 MR. WARREN: Okay. And did you participate in those
12 discussions?

13 MS. McNALLY: I did participate in a few of those
14 discussions, yes.

15 MR. WARREN: Okay. Now, in this proceeding,
16 immediately prior to the commencement of the oral hearing
17 or shortly before it, a document was filed with the Board,
18 which has been marked as Exhibit K1.2, and it is described
19 as: "OPA province-wide residential comparison table for
20 THESL OEB hearing."

21 Do you have a copy of that document?

22 MS. McNALLY: Sorry, I'm not --

23 MR. WARREN: It's a great big chart, a bigger version
24 of the chart with green on the left side and...

25 MR. MILLAR: Madam Chair, we could provide a copy, if
26 the witness doesn't have one.

27 MS. McNALLY: Let's see.

28 MS. HARE: Why don't you do that?

1 MS. McNALLY: Is it this? Is that it? Yes. I have
2 it.

3 MR. WARREN: Now, prior to your testimony today, have
4 you -- sorry, let me be precise about the timelines.

5 In preparation for your testimony today, did you
6 review Exhibit K1.2?

7 MS. McNALLY: I did not review this in detail, no.

8 MR. WARREN: Okay. Now, I asked Mr. Tyrrell this
9 question yesterday and we didn't get an answer, for reasons
10 which are not relevant to our exchange at the moment.

11 But can you tell me whether or not you had seen this
12 document or something like this document in the period from
13 early March to April 21st?

14 MS. McNALLY: No, I did not.

15 MR. WARREN: Now, this document was introduced, I'm
16 going to suggest - and my friend Mr. Rodger will no doubt
17 quarrel with me if I am mischaracterizing it - was
18 introduced for the purpose of persuading the Board that
19 there are differences, material differences, on the
20 residential programs that would make the Toronto Hydro
21 programs non-duplicative.

22 Can you tell me if the substance of what's contained
23 in the green boxes -- that is the distinctions -- was that
24 information conveyed to the OPA in the discussions in March
25 and April?

26 MR. RODGER: Just one clarification, Madam Chair.

27 This was introduced not so much to show differences,
28 but to show that the Toronto Hydro programs were

1 incremental to the OPA programs.

2 MR. SOMMERVILLE: So similarities?

3 MR. RODGER: Well, it could be, but again, the point
4 is that these are incremental differences, not simply
5 differences, per se, but incremental additions to what the
6 OPA has provided.

7 MR. WARREN: Can we agree, Mr. Rodger -- I'm sorry,
8 Mr. Chairman -- sorry, Mr. Sommerville, if you had a
9 question.

10 MR. SOMMERVILLE: No. No, that's fine.

11 MR. WARREN: Can we agree, Mr. Rodger, if I were to
12 characterize this as a document that was introduced for the
13 purpose of persuading the Board that with respect to these
14 programs, that they're not duplicative? Can we agree on
15 that?

16 MR. RODGER: That's right. That the emphasis is on
17 incremental to what the OPA province-wide programs offer.

18 MR. WARREN: I will accept your coded language and
19 come back to Ms. McNally.

20 Can you tell me whether or not the substance of what
21 is contained in the green box was conveyed to the OPA
22 during the period when you were having discussions, that is
23 March and April of this year?

24 MS. McNALLY: So what I can tell you is during our
25 discussions we made reference to the -- Toronto Hydro's
26 application. So I will just -- it's the material they
27 filed, which was made up of nine program descriptions.

28 And it is those that we had discussions about, to get

1 clarification on issues in them.

2 I don't know, looking at this immediately, whether or
3 not these match, so I can't comment on that. What we did
4 in our discussions was make reference to the application.

5 MR. WARREN: Okay. This is an important point from
6 the perspective of my client, Ms. McNally.

7 Just as you look at this information here, as a
8 participant in the discussion, can you tell the Board,
9 based on your direct knowledge of the discussions, whether
10 or not some or all of the information contained in this box
11 was conveyed to the OPA?

12 If you want to take a moment to look at it, by all
13 means.

14 MS. McNALLY: Sorry -- I guess I just want to go back
15 to I feel a little uncomfortable, having not read this
16 before, being able to go back and forth.

17 What I can tell you - and I don't remember everything
18 we discussed at those meetings - is, again, that we
19 discussed the substance -- we actually discussed the
20 substance of the programs.

21 And I don't recall in detail exactly what we
22 discussed, but we would have gone over and had a discussion
23 and asked questions about the content.

24 But I apologize, I don't now -- it was --

25 MR. WARREN: Fair point, Ms. McNally. I won't press
26 you on it, then.

27 I take it, though, that there were detailed
28 discussions about the evidence that Toronto Hydro had filed

1 in this application?

2 MS. McNALLY: We certainly -- we had an in-person
3 meeting with two Toronto Hydro staff, who I believe were on
4 your panel earlier today, as well as some telephone
5 conversations, and we did discuss - we had some questions
6 for them and we discussed those.

7 MR. WARREN: And the purpose of those discussions was
8 to determine whether or not some or all of the nine
9 programs were duplicative? I have understood that
10 correctly?

11 MS. McNALLY: So the purpose -- we wanted to get some
12 more information from Hydro One, so that we could then do
13 our assessment, as requested.

14 So it was an information-gathering session.

15 MR. WARREN: And may you and I presume that Toronto
16 Hydro would have used whatever information it felt was
17 persuasive in those discussions to persuade you that the
18 programs, some or all of them were not duplicative? Is
19 that a reasonable assumption on my part?

20 MS. McNALLY: Certainly Toronto Hydro came to us -- I
21 mean, clearly, they believed they're not duplicative. I
22 believe that is what they have said in evidence, and they
23 brought the cases forward.

24 MR. WARREN: And the outcome of those discussions is
25 the letter from Mr. Pride of April 21, 2011; correct?

26 MS. McNALLY: Yes. Our assessment, based on
27 discussions and our purposive approach in thinking about
28 the issue was our letter of April 21st. That's correct.

1 MR. WARREN: Thank you.

2 I have just two matters I wanted to cover off.

3 This is to some extent a segue from an exchange you
4 had with Mr. Sommerville just before the break.

5 Would it be fair for me to conclude, Ms. McNally,
6 looking at the April 21 letter, that the OPA feels that the
7 five programs you've concluded are not duplicative, that
8 they are improved as a result of the OPA having reviewed
9 them in detail? Is that a fair conclusion on my part?

10 MS. McNALLY: Improved? As I commented in response to
11 a question from the Panel, we didn't make -- we haven't
12 changed the design of these programs.

13 We've given some guidance on how we think delivery can
14 be done in a way that improves the whole package of
15 programs, so province-wide, as well as tier 2/tier 3. So I
16 think the quality of these programs is thanks to Toronto
17 Hydro. Our comments are about implementation.

18 MR. WARREN: The delivery -- we can certainly agree
19 that you feel that delivery of the programs has been
20 improved as a result of your review, fair, and the
21 conditions that you have imposed?

22 MS. McNALLY: Yes. We obviously feel these conditions
23 are important or relevant, or we wouldn't have included
24 them in the letter.

25 MR. WARREN: Looking at your prefiled evidence of
26 April 29th, if I go to the second page, one of the four
27 pillars of your analytical framework -- I have mixed my
28 architectural metaphors there, but I apologize.

1 MS. McNALLY: I can follow.

2 MR. WARREN: The third one, "Ensure Prudent Use of
3 Rate Payer Funds by Avoiding Duplication of Resources",
4 certainly you feel that in issuing the letter of April 21,
5 you have helped to accomplish that goal; fair?

6 MS. McNALLY: Yes, that's correct.

7 MR. WARREN: Would it not be fair for me to conclude
8 that if the OPA were to play a similar role in all of the
9 LDC applications, it would certainly help to accomplish
10 that goal across the entire spectre of LDC applications?
11 Is that not fair? If it worked for Toronto Hydro, there is
12 no reason to think it wouldn't work for all of the LDCs;
13 fair?

14 MS. McNALLY: I certainly hope that we provided value
15 to the Board today. I think it is also possible for LDCs
16 on their own to adopt a similar framework and assess their
17 programs. So, yes, we provided value. I also think that
18 LDCs could use this analysis or another analysis offered by
19 the Board, and I think...

20 MR. WARREN: My final question is just a technical
21 question, and it arises from an exchange yesterday with one
22 of the Toronto Hydro panels.

23 And in this context, it might help if you would turn
24 up from the record in this case a response to Board Staff
25 Interrogatory No. 1.

26 MS. McNALLY: I don't have the interrogatories.

27 MR. WARREN: Ms. McNally, I am looking at page 3 of 4
28 of the April 1st version of this interrogatory response.

1 What this page sets out is the total cost of the OPA
2 programs and the Toronto Hydro programs, and the summary we
3 got yesterday in rough numbers -- go down to the last
4 sentence, but in rough numbers was that the PAB for the
5 Toronto Hydro area from the OPA is roughly \$50 million,
6 that the Toronto Hydro spending for which it is seeking
7 approval in this case is roughly \$50 million.

8 The one number that we didn't have was a number of the
9 estimate for the OPA incentives that it might be paying for
10 the programs in this area. Do you know how much that --
11 what that dollar figure would be?

12 MS. McNALLY: I don't know offhand.

13 MR. WARREN: Can you undertake to get that number and
14 provide it to us, please?

15 MS. McNALLY: Yes, I can.

16 MR. WARREN: Thank you very much. Those are my
17 questions. Thank you.

18 MR. MILLAR: The undertaking will be J3.5.

19 **UNDERTAKING NO. J3.5: TO PROVIDE ESTIMATED FIGURE OPA**
20 **MIGHT BE PROVIDING FOR PROGRAMS.**

21 MS. McNALLY: Thank you.

22 MS. HARE: Mr. Buonaguro, do you have questions for
23 this witness?

24 **CROSS-EXAMINATION BY MR. BUONAGURO:**

25 MR. BUONAGURO: Yes, thank you. Good afternoon.

26 MS. McNALLY: Good afternoon.

27 MR. BUONAGURO: First I should mark an exhibit. I
28 distributed last week a letter from the Ontario Power

1 Authority to Hydro One dated January 26th, 2011.

2 MR. MILLAR: That will be Exhibit K3.5.

3 **EXHIBIT NO. K3.5: LETTER FROM THE ONTARIO POWER**
4 **AUTHORITY TO HYDRO ONE DATED JANUARY 26, 2011.**

5 MR. BUONAGURO: Thank you.

6 And I guess I will start with this letter. You
7 mentioned in your evidence today about the evolution of the
8 OPA's thinking from the time of the Hydro One application
9 and the THESL application, so I just wanted to talk about
10 that briefly. And it turns out this letter I guess comes
11 in handy with that, because this I think shows a slightly
12 different view on a similar type of education program.

13 So looking at K3.5, I am trying to find my -- I don't
14 have anybody to do this for me, so I have to do it myself.

15 Do you have a copy of the letter?

16 MS. McNALLY: Yes, I do. Thank you.

17 MR. BUONAGURO: So for this one, I will work from this
18 and I will leave the -- I am going to leave the K1.1
19 letter, which is the April 21st letter, the THESL-related
20 letter, on the screen for reference.

21 So looking at the January 26th letter, K3.5, I am
22 going to skip past the first two paragraphs. You talk here
23 or the letter talks about the programs that Hydro One
24 proposed; correct?

25 MS. McNALLY: Yes.

26 MR. BUONAGURO: And, in particular, one of the
27 programs, the first program mentioned here, is the
28 community education program.

1 Are you familiar with that program?

2 MS. McNALLY: Certainly I know that that was one of
3 their programs, yes. It is listed here.

4 MR. BUONAGURO: At a high level, would it be similar
5 in nature to the education programs that the -- that THESL
6 is proposing in this application?

7 MS. McNALLY: In preparing for today, I was focussed
8 on THESL, so I didn't go back to look at the Hydro One.

9 MR. BUONAGURO: Okay. Turning over the page, and at
10 the second paragraph, the letter states:

11 "The OPA is supportive of the applicants moving
12 forward with the implementation of the proposed
13 Board-approved programs subject to the following
14 conditions..."

15 And under bullet 2, it says that events under the
16 community education program will not use funds available
17 through the province-wide consumer program.

18 In reading that opening paragraph and that bullet
19 point together, what I took it to mean was, at least at
20 that point in time, when it came to, in this case, a
21 community education program, the main concern of the OPA
22 was that the funding underpinning that program came
23 entirely from outside of OPA-related funds, and as long as
24 that was the case, then you were, quote, supportive of the
25 applicants in bringing forward that program to the OEB for
26 approval.

27 Is that a fair characterization?

28 MS. McNALLY: So looking at the letter, again, I guess

1 just to note first that in answering this, I am going to
2 assume the community education program is similar to the
3 ones we're talking about, just so --

4 MR. BUONAGURO: That is my assumption.

5 MS. McNALLY: Making that assumption, you will note
6 that in the Hydro One letter, so K3.5, we didn't reach a
7 conclusion about duplication on that point, and similarly
8 in the Toronto Hydro letter, K1.1, we also haven't reached
9 a conclusion about duplication on this type of education
10 program.

11 MR. BUONAGURO: Right, that's fair. But what I am
12 trying to understand is that at this point in time, in
13 Hydro One's application, you did put a condition or at
14 least an understanding implicit in the letter to make sure
15 that, if it were true, the OPA would actually support Hydro
16 One in its application to the Board, which is what the
17 first part of the paragraph says:

18 "The OPA is supportive of the applicants moving
19 forward with implementation of the proposed
20 Board-approved program subject to the following
21 conditions..."

22 Then the letter says if you are not using money from
23 the OPA to fund any part of the events that underpin that
24 community education program, then you should go to the --
25 we agree you should go to the OEB and try to get the money
26 there. That is how I read that letter, that simply.

27 Should I read the letter that way or is there some
28 other --

1 MS. McNALLY: I think that's right. So in this case,
2 we certainly were supportive of Hydro One moving forward,
3 as we're supportive of Toronto Hydro moving forward, to get
4 tier 2/tier 3 programs into market.

5 And so that our comment was, if you are going to seek
6 Board funding for the community education program, then you
7 shouldn't use -- then you shouldn't use PAB funding for it,
8 to keep them separate. So if you are going in that
9 direction, then it should be Board funds, without any
10 comment on duplication.

11 And I think what you see in our Toronto Hydro letter
12 is just kind of the same issue, but phrased differently,
13 which is if you didn't get Board -- is that you could fund
14 these activities from PAB.

15 So I think what we're trying to say here is, if you
16 are going to get Board approval, go that route, but then
17 don't use PAB, but you could use some of these activities
18 under PAB. So I think this gets at our purpose of ensuring
19 not duplication of using funds.

20 So you either go that way or you could go that way,
21 but without commenting on whether this is duplication.

22 MR. BUONAGURO: I will take you, then, to the Toronto
23 Hydro letter, which is on the screen, the K1.1, I believe.

24 You will see I have highlighted some sections. I
25 basically highlighted 1 to 4, because that is the subject
26 of the next highlighted section, which is one of the -- I
27 guess the key sentences for today, where it says:

28 "The OPA is of the opinion that programs 1 to 4

1 above are payable through the existing program
2 administration budget provided under the
3 province-wide programs."

4 From your testimony today, what I took that to mean,
5 or I guess put another way, what it should have said was
6 something like: The OPA is of the opinion that the
7 activities underpinning the programs in 1 to 4 are payable
8 through the existing program administration budget.

9 I don't know if you went that far, but that is what I
10 understood you to be saying.

11 MS. McNALLY: I think that's accurate. The OPA is of
12 the opinion that the activities could be paid for out of
13 the PAB.

14 MR. BUONAGURO: Right. And in that context, they
15 would be payable under the PAB -- and I'm sort of trying to
16 paraphrase most of what you said today in one form or
17 another -- they would have been payable under the PAB if
18 they underpinned education or marketing initiatives related
19 to a specific OPA program, because there's budgets for
20 marketing and education of consumers with respect to
21 specific OPA programs?

22 MS. McNALLY: Sorry, could you repeat your question?

23 MR. BUONAGURO: Well, I will try to take you to an
24 example.

25 Well, if you were doing a particular -- one of the
26 programs -- and is from the K, I think, 1.2, the big
27 spreadsheet with the green shading on it -- talks about the
28 in-store retail campaign and giving out things in an in-

1 store retail campaign.

2 It seemed to me from this letter that you were saying
3 you can do that with your PAB funding. You could give away
4 stuff in the store, if it was part of the strategy for
5 marketing a particular OPA province-wide program.

6 You would approve that kind of spending under the PAB,
7 or it would be an eligible expense of the PAB, an activity
8 versus the full program?

9 MS. McNALLY: Right. So again, we went over the
10 master agreement.

11 The PAB can be used for purposes solely related to the
12 OPA-contracted programs, and then the -- and I am now
13 looking at article 4, 4.1(b) of the master agreement. Yes,
14 I believe Exhibit K4.3.

15 So again 4.1(b), program administration budget's only
16 for LDC eligible program expenses, and then that is defined
17 as an expense directly related to a registered CDM program.

18 MR. BUONAGURO: Right. So I am just trying to -- it
19 seems to me from what you're saying that there is a
20 hierarchy in the OPA funding.

21 There is a OPA-approved program, and anything
22 marketing-related to that program, linked to that program,
23 the promotion of that program, education of consumers about
24 that program, you could do a whole bunch of different
25 things or different activities to market or educate
26 consumers about that program, and that would include just
27 about everything that Toronto Hydro proposed under the
28 community outreach program for OEB approval as activities.

1 You could do any of those specific activities to some
2 degree to market that particular initiative, in theory?

3 MS. McNALLY: Yes.

4 MR. BUONAGURO: And pay for it out of the PAB?

5 MS. McNALLY: Yes. I believe that's correct.

6 As I mentioned, we haven't fenced in the -- the OPA
7 and LDCs together didn't fence in what the appropriate
8 marketing activities were. That is left open to the Board
9 to determine -- sorry, to the LDC, to determine what an
10 appropriate marketing -- and that would include -- there is
11 many different ways of marketing these programs.

12 MR. BUONAGURO: Right, and the critical element is the
13 connection to the actual OPA program that that activity is
14 geared towards educating or marketing?

15 MS. McNALLY: Yes, that's correct. Under the master
16 agreement, PAB must be spent on -- in a way that is related
17 to the province-wide programs.

18 MR. BUONAGURO: Right. And my understanding of the
19 Toronto Hydro programs, certainly the community outreach
20 program -- which is the subject of the big table that --
21 all the green stuff is their program -- my understanding --
22 and one of the ways they distinguish it from -- in such a
23 way that it is not duplicative, is that they're not tying
24 those activities to the -- a particular OPA program.

25 The goal or the reason for doing the programs is
26 something else, which is education in and of itself, or
27 marketing of CDM in general, as opposed to being a specific
28 -- part of a specific strategy for a specific OPA program.

1 I think that is one of the defining distinctions
2 between the community outreach program, in particular, and
3 doing an activity that is specific to an OPA directive
4 which would qualify for PAB funding.

5 Is that -- does that make sense to you?

6 MS. McNALLY: So I think you are now hitting the
7 essence of the complexity that we pulled back from making a
8 final decision and stopped at: These are the types of
9 activities that you could use the PAB for.

10 And I think where we're getting to is kinds of the nub
11 of the complexity of how you compare a standalone marketing
12 and outreach program with marketing that is part of a
13 province-wide program.

14 MR. BUONAGURO: Am I correct that all of the province-
15 wide programs that exist are tied to kilowatt savings or
16 peak savings in some form or another?

17 MS. McNALLY: So again, the nomenclature can sometimes
18 be a bit messy.

19 So we have basically four or five province-wide
20 programs. There is the residential program, the commercial
21 program, the industrial program -- I guess we have four --
22 and the low-income program.

23 Within each of those programs, there are a series of
24 initiatives.

25 And there are initiatives that are directed at
26 megawatts, so ERI, the electricity retrofit program.

27 And then there are also enabling initiatives, which
28 are not directly connected with megawatts, so training,

1 capability-building.

2 So it is a combination of megawatt -- direct megawatt
3 generating activities, capability-building activities, and
4 then cutting across all of that are marketing and outreach
5 activities.

6 MR. BUONAGURO: But just even in the way you described
7 it, though, there seemed to be a hierarchy. You start with
8 the actual programs which are geared toward savings, and
9 then the second and third parts of that are all feeding
10 into building up the effectiveness of the actual savings or
11 peak savings or megawatt savings that are being achieved.
12 That is how I understood what you just said.

13 MS. McNALLY: So my colleagues who do the capability-
14 building would be insulted if I suggested there was a
15 hierarchy.

16 We certainly have -- so again, there is the province-
17 wide portfolio, that breaks down into, again, the four
18 categories of program, the four big buckets, residential,
19 commercial, industrial and low-income.

20 And then with each of those programs, there are
21 initiatives. There are the initiatives that lead to direct
22 savings, and there are enabling initiatives. And then
23 there is marketing that cuts across the whole thing.

24 MR. BUONAGURO: When you talk about enabling
25 initiatives, is it enabling -- to do what?

26 MS. McNALLY: The enabling initiatives are really
27 doing two, maybe three things.

28 They're there in the short term to enable the market

1 to pick up the programs, to better deliver. The enabling
2 initiatives are also part of our larger market
3 transformation strategy. So how do you begin to move the
4 market so conservation becomes an everyday, business-as-
5 usual choice.

6 So the enabling are really doing two things;
7 supporting resource acquisition, as well as moving the
8 market.

9 MR. BUONAGURO: Now, my understanding - and I've said
10 this already once - my understanding is that part of the --
11 I think one of the key characterizations of the THESL
12 education programs is that they're not tied to any
13 particular megawatt savings, clearly. I think on the face
14 of it, they don't claim any megawatt savings or peak
15 savings, for example; correct?

16 MS. McNALLY: That certainly was how I read their
17 evidence.

18 MR. BUONAGURO: Right. And my understanding from -- I
19 am going to try to pull it up here -- from the OPA evidence
20 that you provided -- this is at line -- starting at line 7
21 on page 3 of your evidence, and I have highlighted:

22 "The THESL programs are standalone programs."

23 This is at line 8.

24 "There is no simple analogue on the OPA-
25 contracted province-wide programs, which do not
26 include standalone marketing and outreach
27 initiatives."

28 I took that simply to mean you don't have any programs

1 that are in and of themselves education and outreach
2 programs that an LDC can access?

3 MS. McNALLY: I think that is correct. We have
4 capability-building programs which have -- many of them are
5 training programs, so you might call them education
6 programs. So we have standalone training programs or
7 education programs.

8 We have the -- we have our direct savings programs,
9 and then we have marketing that cuts across all of the
10 programs.

11 MR. BUONAGURO: Okay. And I am going to be bold and
12 try to work in a Marshall McLuhan aspect of this, because I
13 promised somebody I would try.

14 But all I know about Marshall McLuhan comes from CBC
15 commercials, but my understanding is that there is two
16 things that are at play; there is the medium and there's
17 the message.

18 My understanding is that when you are writing a letter
19 in respect of THESL's programs, and you said that the
20 programs - and I think we really meant to be the activities
21 - could be recovered under PAB.

22 You were saying that those types of mediums, in terms
23 of distributing information, could be collected under the
24 PAB. These are lots of different things that you could do
25 to transmit messages to consumers, but the defining
26 difference, though, between what THESL was proposing and
27 why they had to go to the OEB to get the money, as opposed
28 to go to the OPA, is that the message wasn't related to

1 specific OPA programs. The message was a more general one.
2 It is just more general education and marketing of CDM in
3 general, and culture in general, which is a type of program
4 that they can't actually access on a standalone basis from
5 the OPA.

6 Can you comment on that? I don't expect you to know
7 more about Marshall McLuhan than I do.

8 MS. McNALLY: Well, you are safe there. I do not --
9 or I don't know what you know about him, but I don't know
10 much about Marshall McLuhan.

11 So -- and I think I've lost the nub of where you were
12 going.

13 MR. BUONAGURO: All right. In some contexts I would
14 consider that a victory, but not in this case, believe me.

15 I am trying to -- it seems odds to me that -- it
16 seemed odd to me, when I first read the letter, that you're
17 saying the programs could be recovered from PAB, but the
18 only -- when in fact none of those activities are parts of
19 programs that are part of any of the projects that you are
20 doing that THESL can then recover from the PAB.

21 I am trying to figure out: Why would you say that?
22 My understanding, from everything I have heard over the
23 last day or two, is that the reason you would say that is
24 because these are -- all the components of the education
25 program that THESL was trying to bring forward as part of
26 their program are all components that could be incorporated
27 in any number of different ways in any number of different
28 programs, including any or all of the OPA programs. That

1 is true, isn't it?

2 MS. McNALLY: Yes. I guess I would just -- it's not
3 that they can be incorporated. There is funding for
4 marketing and outreach related to the province-wide
5 programs, and the flexibility has been left to the LDCs to
6 determine how they want to market and outreach the programs
7 using the PAB funding.

8 And the types of activities could include -- I mean,
9 it could be advertising. It could be outreach events like
10 those described in programs 1 to 4.

11 MR. BUONAGURO: And my understanding, though, was that
12 that is all in respect of the end message, which culminates
13 in the actual OPA-approved programs that you are trying to
14 deliver, whereas the THESL program, education program, the
15 ultimate message isn't related to a particular OPA program.
16 I think that is illustrated in their description of their
17 programs under the K1.2 and K1.3.

18 Their ultimate message is a more general one, which is
19 a general type of message that they can't access funding
20 for under the OPA PAB. They can't just -- if they wanted
21 to run a class in a school educating people on CDM, you
22 wouldn't fund it, would you?

23 MS. McNALLY: If they wanted to run a class?

24 MR. BUONAGURO: Unless it was a class specific to one
25 of the OPA programs. I am trying to come up with an
26 example that you will agree with.

27 MS. McNALLY: So as I read the master agreement - and
28 it is difficult to give a hypothetical - the key piece in

1 the master agreement is that PAB can be used when it is
2 directly related to the province-wide program.

3 So that would be -- that's the criteria. That is the
4 key.

5 MR. BUONAGURO: But if there was an information
6 session that didn't mention a single OPA program?

7 MS. McNALLY: Then I guess in its simplest, if it can
8 be proven that expenses don't support the province-wide
9 programs, then on the face of the master agreement, that
10 would run afoul.

11 MR. BUONAGURO: Okay. What if they happened as part
12 of -- 10 percent of the program happened to mention OPA
13 programs, because it would be silly not to mention them?

14 MS. McNALLY: I think we are -- I think we're back in
15 the midst of the complexity, which is the reason we didn't
16 provide an opinion on duplication in this matter, simply
17 made the statement we made, and are looking forward to
18 guidance from the Board on this issue and how to unravel
19 this complexity.

20 MR. BUONAGURO: All right, thank you.

21 I want to take you to the new exhibit, the K4.3, which
22 is an excerpt of the master CDM program agreement that was
23 provided today.

24 I just have a couple of questions for clarification,
25 because I got a little confused reading some of the
26 sections, and it may be a function of not having the whole
27 document in front of me, but I am not sure that is the
28 case.

1 Just looking at section 2.3, marketing, and at page
2 12, part B, which I think you referred to a couple of
3 times, the LDCs' obligations under the agreement. Are you
4 there?

5 MS. McNALLY: Yes. That is marked page 7?

6 MR. BUONAGURO: Yes. Page 7, and at the top it says
7 page 12 of 97 --

8 MS. McNALLY: Yes.

9 MR. BUONAGURO: -- of this particular set of evidence.
10 Okay, thanks.

11 Then part 1 I think you have talked about, "will
12 market each registered initiative to the relevant target
13 sector", and then it goes on.

14 I am interested in part 2, where it says:
15 "Will, in a manner it sees fit and having regard to the
16 initiative schedule, develop and manage relationships with
17 eligible persons."

18 I will stop there. My understanding - and I don't
19 think it is in this part of the excerpt, but I think from
20 the master agreement - "eligible persons" means people who
21 would meet the eligible criteria for one or more OPA-
22 approved programs. Is that a synopsis of eligible persons?

23 MS. McNALLY: Well, I apologize. We didn't copy this
24 I believe as part of the excerpt the Board received. An
25 eligible person means, in respect of an initiative, a
26 person that meets the applicable eligibility criteria.

27 MR. BUONAGURO: So it is tied back to the initiatives?

28 MS. McNALLY: Yes, that's correct.

1 MR. BUONAGURO: Right, okay.

2 And it says, "for the purposes of identifying and
3 undertaking CDM opportunities". Now, I did have indirect
4 access to the whole agreement, at least parts of the
5 definition section. I don't think the term "CDM
6 opportunities" is -- is it a defined term in the agreement?

7 MS. McNALLY: It is not capitalized, and so by the
8 protocol here, it wouldn't be a defined term.

9 MR. BUONAGURO: Okay. And "promoting participation in
10 the registered initiatives", which is a defined term, those
11 are the OPA initiatives, the OPA programs?

12 MS. McNALLY: Yes.

13 MR. BUONAGURO: And then it says, "or other CDM
14 projects".

15 So when it says "or other CDM projects", what does
16 that mean? Again, because it is not capitalized, that is
17 not a defined term?

18 MS. McNALLY: That is correct.

19 MR. BUONAGURO: Okay. Do you have any insight into --
20 I am looking at the two.

21 MS. McNALLY: I do. You are looking at the two
22 together, so I can comment on that if you'd like.

23 MR. BUONAGURO: I am looking at all three. Just to
24 let you know what I am looking at, I'm looking at three:
25 CDM opportunities, registered initiatives, and other CDM
26 projects.

27 And "registered initiatives" is a clearly defined term
28 and it's specific to the OPA, but on the face of it, it

1 seems that there is a general flexibility to develop and
2 manage relationships with eligible persons for the purposes
3 of identifying and undertaking general CDM opportunities
4 and general CDM projects. Am I reading that correctly?

5 MS. McNALLY: Yes. Let me take a step back and give
6 you some context on these two provisions.

7 One is about marketing, one, and then two is about
8 relationship management. And where really this comes from
9 is certainly our work and our research is telling us that
10 for the mass market, for the residential sector, mass
11 marketing is an effective communication tool and other
12 forms of outreach.

13 With your business customers, what we found,
14 especially the larger business customers, you really need a
15 direct account management approach. So mass marketing
16 itself isn't going to cut it in that business sector. You
17 need to be out there. You need to be working with the
18 business sector, working on their terms, talking their
19 language.

20 And so two is really to capture that, the need to do
21 account management. And, in fact, in the industrial
22 program, there is funding provided for the LDCs to hire key
23 account managers, and in the commercial program there is
24 some funding for business account reps. So real emphasis
25 on using these kinds of outreach.

26 Again, that is both -- I mentioned in response to the
27 question on enabling, that is both to help us hit these
28 targets, as well as to builds on the market transformation,

1 building that knowledge and capability in the market.

2 So in terms of two, and some of the questions, when
3 you are doing the outreach with the eligible persons, you
4 want to be talking with them about conservation generally
5 and energy management and their opportunities, and helping
6 them identify opportunities both in the initiatives, but
7 also, more broadly, if there is an NRCan -- if there is
8 another program, an NRCan program or a gas program or tier
9 2/tier 3 program, or perhaps there is other opportunities,
10 we don't want to be myopic in how we approach the customer.
11 We want to be holistic with the customer.

12 We have very aggressive targets to hit in Ontario, and
13 so we need to be working with the customers to show them
14 all of their opportunities.

15 So that is really what is being got at here.

16 MR. BUONAGURO: Okay. So part of what you are saying
17 there is that, yes, they're supposed to be talking about
18 the registered initiatives, but it wouldn't make sense for
19 them to not mention other CDM opportunities or CDM projects
20 while they're doing it. In fact, that doesn't make sense.

21 MS. McNALLY: That's correct. I mean, part of our --
22 the move with these new programs is to be much more
23 customer focussed and to speak to the customer in a
24 language that they understand.

25 MR. BUONAGURO: Okay. Would the opposite be true,
26 then? If somebody was -- let's say the Board approved a
27 program that lets Toronto Hydro go out into the community
28 and talk about CDM opportunities and CDM projects in

1 general.

2 You would expect them to, while they're doing that,
3 mention the registered initiatives, even though that may
4 not be the raison d'etre of the program?

5 MS. McNALLY: That's correct. And that is the reason
6 in the letter of April 12th from the OPA that we talk about
7 -- that we talk on the second page, the first bullet point,
8 about the programs, the conditions of programs.

9 "Toronto Hydro will deliver them in a way that
10 enhances the overall effectiveness of the
11 province-wide program."

12 The line is program delivery. That was precisely what
13 we were getting at, as I commented earlier.

14 MR. BUONAGURO: Thank you.

15 One last quick question. You mentioned a few times
16 the low-income program.

17 MS. McNALLY: Yes.

18 MR. BUONAGURO: And there is some questions been asked
19 about that --

20 MS. HARE: Excuse me, Mr. Buonaguro. I'm sorry, Ms.
21 Simon and Mr. Gardner, your talking is very distracting.

22 MR. BUONAGURO: All right. Thank you.

23 You mentioned a couple of times, and there has been
24 questions asked about it. My understanding is that it is
25 just about to be launched; is that fair?

26 Can you give me an update of where we are at with the
27 low-income program?

28 MS. McNALLY: It is my understanding that it is meant

1 to be launched in May.

2 MR. BUONAGURO: So of this month?

3 MS. McNALLY: Of this year.

4 MR. BUONAGURO: Of this year? Good. Thank you for
5 closing that loophole.

6 And -- all right. I will leave it at that. Thank you
7 very much. Those are my questions.

8 MS. HARE: Thank you.

9 Mr. Crocker, do you have questions?

10 MR. CROCKER: Yes. I do, Madam Chair, thank you.

11 **CROSS-EXAMINATION BY MR. CROCKER:**

12 MR. CROCKER: I circulated, or I gave to Board Staff
13 an interrogatory and response from the Hydro One hearing
14 that I would like to -- or application, that I would like
15 to ask my friend about. And I -- I'm sorry, ask the
16 witness about, and I showed it to her earlier.

17 MR. MILLAR: This will be Exhibit K3.6. Mr. Crocker,
18 what is the reference number for the -- I don't have it in
19 front of me. Is it an undertaking or a --

20 MR. CROCKER: It is Exhibit I, tab 9, schedule 9, page
21 1 of 1 from the -- from EB-2010-0332.

22 MR. MILLAR: Thank you.

23 **EXHIBIT NO. K3.6: EXHIBIT I, TAB 9, SCHEDULE 9,**
24 **PAGE 1 OF 1 FROM EB-2010-0332.**

25 MR. CROCKER: I should say, as a result of the last
26 couple of questions Mr. Warren asked and Mr. Buonaguro's
27 cross-examination, I don't have very much left.

28 And in fact, my big coup was going to be to have the

1 witness agree to provide the evidence that she agreed to
2 provide in Undertaking J3.5. I must admit I am deflated
3 that it has already been done.

4 [Laughter]

5 MR. SOMMERVILLE: You should get a royalty.

6 MR. CROCKER: I will pursue it.

7 [Laughter]

8 MR. CROCKER: Ms. McNally, I have given you an
9 interrogatory and a response that we asked Hydro One in
10 their CDM application.

11 And they have broken out the OPA's budget for CDM in
12 that table that they provide; that's correct, isn't it?

13 MS. McNALLY: That appears to be what they've done,
14 yes.

15 MR. CROCKER: Right. They have taken that
16 information, as they've indicated underneath it, from OPA
17 material, OPA information?

18 MS. McNALLY: That is what they cite.

19 MR. CROCKER: Okay. And then can I take it from this
20 that your budget for consumer programs is \$570 million,
21 commercial institutional programs is \$568 million, and
22 industrial programs is \$208 million?

23 MS. McNALLY: So that is certainly what it says in the
24 paper. I am unfortunately unable to independently verify
25 this here and now. But if I read along with you, that is
26 what the paper says.

27 MR. CROCKER: Okay. I will see as we go whether I
28 need to ask you for an undertaking to confirm that, but

1 let's see how we go.

2 The total of that is \$1.356 million. As I understand
3 it, your budget is 1.4 -- not billion...

4 MS. McNALLY: Billion, \$1.4 billion, yes.

5 MR. CROCKER: Yes. I have trouble thinking in terms
6 of millions, let alone billions.

7 Let's come to what the difference might be in a little
8 bit.

9 The fourth program that you mentioned isn't included
10 here; is there any -- do you know why that might be?

11 MS. McNALLY: No. I can't speak for why Hydro One
12 wouldn't.

13 MR. CROCKER: Well, why your material? I assume they
14 have just taken it from your material. Why your material
15 wouldn't include that?

16 MS. McNALLY: Unfortunately, I don't know. It is
17 coming from a province-wide symposium, but I can't tell
18 from here what that was or what the materials were, so I
19 can't comment on what was in or out of that.

20 MR. CROCKER: Okay. That's fine.

21 Of that \$1.4 billion, is all of it to go to LDCs? Do
22 you know?

23 MS. McNALLY: That \$1.4 billion is for the province-
24 wide -- it's for the province-wide OPA-contracted province-
25 wide programs.

26 MR. CROCKER: And LDCs are to deliver those programs,
27 I assume, including Hydro One?

28 MS. McNALLY: Yes. LDCs, including Hydro One, will be

1 delivering those programs.

2 MR. CROCKER: So all of that 1.4 is to be provided to
3 LDCs for them to deliver the OPA programs?

4 MS. McNALLY: The funding for the programs, so
5 underneath that 1.4 billion, there is PAB funding, there is
6 incentive funding, there is marketing funding.

7 So some of that funding goes to customers and some
8 goes to LDCs.

9 MR. CROCKER: I understood -- and maybe I am wrong --
10 that the 1.4 billion was program admin -- that was the
11 program administration part of it; is that right?

12 MS. McNALLY: No. My understanding, the 1.4 billion
13 is the entire budget for the programs.

14 MR. CROCKER: All right. How do you determine how
15 that is allocated?

16 MR. VEGH: Excuse me, Madam Chair. I know that there
17 were issues earlier on on the -- or there was a discussion
18 earlier on on the Issues List, and you know, while the -- I
19 forget the exact language, but the Board indicated that,
20 you know, the information about the total spend, et cetera,
21 from the OPA is relevant for some context, but that you
22 would not be exploring spending under the OPA programs.

23 And I think my friends is kind of digging into that
24 level by asking issues around the -- how the OPA determined
25 the allocation among the different programs.

26 I don't think that is an issue in this proceeding.

27 MS. HARE: Were you asking about amongst the different
28 programs? Or how it is decided how much Toronto Hydro, for

1 example, gets?

2 MR. CROCKER: That is what I was asking, how much
3 Toronto Hydro --

4 MS. HARE: If it relates to how much Toronto Hydro
5 gets, I think it is relevant.

6 MR. SOMMERVILLE: We already have, I think, an
7 undertaking to the effect that to \$50 million will be added
8 the additional sum that OPA is going to provide pursuant to
9 undertaking for Mr. Warren.

10 So I think that is on the way.

11 MS. HARE: But I think the question was -- well, I
12 will let you ask the question, but I thought it was how
13 they decided it was 50 million.

14 MR. SOMMERVILLE: Okay. Sorry.

15 MR. CROCKER: Yes, that's the question.

16 MR. VEGH: I think I misunderstood the question.
17 Thank you, Madam Chair.

18 MS. McNALLY: So I will begin by saying that I came
19 today prepared to talk about the April 21st letter, and
20 didn't come today prepared to talk about the PAB allocation
21 formula.

22 So what I can tell you is that there was a fair amount
23 of discussion about what the appropriate formula was. The
24 parties agreed to it. It's captured in the master
25 agreement.

26 If more detail is required, I am not in a position
27 right now to provide that.

28 MR. CROCKER: Well, let me go a little bit farther,

1 then, and see how we go.

2 Was there any requirement that Toronto Hydro allocate
3 the \$50 million to the three programs or the four programs,
4 as you described earlier, on the same percentages as you
5 have allocated the money?

6 In other words, I haven't figured out what the
7 percentages are, but just with respect to the industrial
8 program, that is a lot more than two percent of your
9 budget, and I just wondered whether there were any
10 conditions - if I can put it that way - put on the way
11 Toronto Hydro -- because that's the group we're dealing
12 with here -- allocated their resources.

13 MS. McNALLY: And unfortunately, I am not able to
14 provide an answer right now on that.

15 MR. CROCKER: Well, I think that is important enough
16 that I would take an undertaking on that. Yeah.

17 And the undertaking would be I have asked you to -- to
18 tell me, to tell the Board, whether there were any
19 conditions put on the \$50 million which was allocated to
20 Toronto Hydro with respect to their CDM -- to their
21 implementing your CDM programs and whether a condition
22 included allocating the \$50 million on the same percentages
23 as you allocated your budget.

24 MS. McNALLY: Sorry, just for clarification for me, so
25 the same percentages as appear on K3.6?

26 MR. CROCKER: Yes, or in fact any percentage, any
27 conditions, but specifically that.

28 MR. MILLAR: The undertaking will be J3.6.

1 UNDERTAKING NO. J3.6: TO ADVISE WHETHER CONDITIONS
2 WERE PUT ON \$50 MILLION ALLOCATED TO TORONTO HYDRO
3 WITH RESPECT TO IMPLEMENTATION OF CDM PROGRAMS; TO
4 ADVISE WHETHER PERCENTAGE ALLOCATIONS WERE THE SAME AS
5 THOSE IN EXHIBIT NO. K3.6

6 MR. CROCKER: Since I am asking for an undertaking, I
7 will ask you for one more. I believe the totals that are
8 provided, as I say, in the -- in Exhibit K3.6 are
9 1,356,000,000, and I wonder whether you could please tell
10 us by way of undertaking what the shortfall is between
11 1.356 billion and 1.4 billion, which is your budget?

12 MS. McNALLY: Sorry. Maybe you were doing math, but
13 can you repeat the result of your math for me?

14 MR. CROCKER: Yes, not my math, my associate's math.
15 I don't do math, not for a long time. The total of the
16 three columns that are provided in Exhibit K3.6 is
17 \$1,356,000,000. As we understand it, and as has been
18 stated here several times, the OPA budget for this program
19 is \$1.4 billion.

20 And I wondered whether you could provide us, by way of
21 undertaking, please, why - where the shortfall comes.

22 MS. HARE: Or maybe confirm whether or not it is
23 really 1.356 rounded up to 1.4.

24 MR. MILLAR: J3.7.

25 UNDERTAKING NO. J3.7: TO PROVIDE EXPLANATION OF
26 DIFFERENCE BETWEEN \$1,356,000,000 FIGURE IN EXHIBIT
27 J3.6 AND \$1.4 BILLION IN OPA BUDGET.

28 MR. CROCKER: Thank you. I have nothing further.

1 MS. HARE: Thank you. Mr. Rubenstein, do you have
2 cross-examination?

3 **CROSS-EXAMINATION BY MR. RUBENSTEIN:**

4 MR. RUBENSTEIN: Yes, very short, though. I just have
5 two questions for you.

6 The first is: Did you review the interrogatory
7 responses in this proceeding to help inform -- did the OPA
8 review the interrogatory responses to help inform its
9 opinion in the letter dated the 21st of April?

10 MS. McNALLY: I did not review them.

11 MR. RUBENSTEIN: And so --

12 MS. McNALLY: I did not ask anybody in my team to
13 review them.

14 MR. RUBENSTEIN: Second, and my last question, is:
15 Are you aware of any other information that exists, whether
16 it is in the OPA's control or not, that might be helpful to
17 the Board in its determination of the issue of duplication
18 that is not on the record in this proceeding?

19 MS. McNALLY: Am I aware -- sorry, can you repeat your
20 question?

21 MR. RUBENSTEIN: Sure. Are you aware, based on your
22 experience, of any other information that might be helpful
23 to the Board in -- that exists, that you are aware that
24 exists, that might be helpful in the Board's determination
25 on the issue of duplication?

26 MS. McNALLY: No, I'm not.

27 MR. RUBENSTEIN: Thank you very much.

28 MS. HARE: Thank you. Mr. Gardner?

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

2 MR. GARDNER: Thank you, Madam Chair, just a few
3 questions. I will also be brief.

4 I am just picking up on your answers to Mr.
5 Buonaguro's questions about training earlier. Am I right
6 to say that you were referencing training in what I believe
7 was the OPA's commercial, institutional and industrial
8 program settings?

9 MS. McNALLY: We have capability building programs --
10 or initiatives under each one of the categories. So there
11 are residential capability building, as well as commercial,
12 industrial.

13 MR. GARDNER: So within residential program, are there
14 any initiatives underneath that program that are specific
15 to training or specific to education?

16 MS. McNALLY: The one that comes to top of mind is
17 there is training for residential, new construction
18 builders, to train them on advanced building standards.

19 MR. GARDNER: And aside from that training, there is
20 no other sort of educative -- that is the only one that
21 comes to mind?

22 MS. McNALLY: That training, and then I commented on
23 the marketing approach, as I mentioned earlier on. There
24 is a three-tiered marketing approach. There is the raising
25 awareness building and the culture of conservation, which
26 is an OPA-driven activity. Then there is the OPA province-
27 wide marketing on the initiatives, so the kind of
28 transactional marketing, and then, as I mentioned, the

1 third bucket is the LDCs have funding for their own
2 marketing.

3 MR. GARDNER: So all three of those are marketing
4 components?

5 MS. McNALLY: Again, we talked about the bit of the
6 blurry line. With energy efficiency, the first step is you
7 need to raise awareness and educate consumers about energy
8 efficiency. Then you go to the next step and you sell the
9 product.

10 MR. GARDNER: Okay, those are my questions. Thank
11 you.

12 MS. HARE: Thank you. Mr. Millar?

13 MR. MILLAR: Madam Chair, I understand Mr. MacIntosh
14 may have a question, but it may have already been asked.

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

16 MR. MacINTOSH: I do, Madam Chair.

17 Ms. McNally, my name is David MacIntosh, and I
18 represent Energy Probe. My question is one of
19 clarification. If you turn to page 1 of your evidence,
20 your witness statement, starting at line 19, I quote:

21 "The OPA recognizes that the OEB will ultimately
22 determine the issue of duplication under the
23 Code. That interpretation will provide guidance
24 to the OPA and LDCs. Pending this guidance, the
25 OPA adopted a 'purposive' approach to
26 interpreting the restrictions on duplication."

27 And so I was interested in clarifying the meaning you
28 were using as you highlighted -- highlighted "purposive".

1 And if I Google and get the Merriam-Webster Dictionary, it
2 has two distinct meanings. The first is: Serving or
3 effecting a useful function, though not as a result of
4 planning or design; the second being: Having or tending to
5 fulfil a conscious purpose or design.

6 I am wondering which of those meanings you were using
7 when you highlight that word?

8 MS. McNALLY: I am going to ask you to read the two
9 meanings, again.

10 MR. MacINTOSH: Fair enough, because they are quite
11 different. The first one is: Serving or effecting a
12 useful function, though not as a result of planning or
13 design; the second being: Having or tending to fulfil a
14 conscious purpose or design.

15 And that is the word you used to describe how you were
16 handling this.

17 MS. McNALLY: I am actually going to side-step your
18 two definitions and confess to being a lawyer. So when we
19 came up with this concept, I was using the concept
20 "purposive" in the legal sense, to look -- when you are
21 interpreting a piece of legislation, to try to look at the
22 purposes of it.

23 So what we did, as you can see from our evidence, is
24 asked ourselves: What do we think the purpose of the
25 duplication restrictions were? And you can see on page 2
26 that we landed on four purposes to avoid duplication, and
27 here I am at page 2 of my witness statement, line 5.

28 The first one was -- one of the purposes was to ensure

1 incremental megawatts and gigawatt hours and to not
2 undermine province-wide programs.

3 Purpose number 2 was to avoid marketplace confusion.

4 Purpose number 3 was to ensure prudent use of
5 ratepayer funds by avoiding duplication of resources.

6 And purpose number 4 was to capture regionally-
7 specific opportunities.

8 Mr. MacINTOSH: So I might say, then, that would seem
9 to me to indicate that it was purposeful, which would be
10 the second definition.

11 MS. McNALLY: I guess my only answer will be that our
12 understanding of purposive is set out here, and whether or
13 not it aligns with the Miriam-Webster, I am not sure at
14 this moment, but certainly what we understood it to be is
15 here in the witness statement.

16 Mr. MacIntosh: Thank you.

17 That's all, Madam Chair.

18 MS. HARE: Thank you.

19 Mr. Millar?

20 MR. MILLAR: Unfortunately, Mr. MacIntosh has taken my
21 last question, so...

22 [Laughter]

23 MR. MILLAR: There is nothing more from me, Madam
24 Chair.

25 MS. HARE: We are going to take our afternoon break
26 now, and return at 10 after 3:00.

27 --- Recess taken at 2:50 p.m.

28 --- On resuming at 3:10 p.m.

1 MS. HARE: The Panel has no questions.

2 Mr. Vegh, do you have any re-direct?

3 MR. VEGH: No. Thank you, Madam Chair.

4 MS. HARE: Okay. Thank you, Ms. McNally. Thank you
5 very much for appearing before the Board. We found your
6 evidence to be very helpful. Thank you.

7 **PROCEDURAL MATTERS:**

8 MS. HARE: Unless there are any other preliminary
9 matters, we are now finished with the proceeding. I just
10 wanted to ask if you had an idea, both Mr. Vegh and Mr.
11 Rodger, about the status of undertakings.

12 MR. VEGH: I put an undertaking request to the OPA as
13 we made them. I expect we will be filing them tomorrow.

14 MS. HARE: That would be very good. Mr. Rodger?

15 MR. RODGER: Yes. I know Toronto Hydro continues to
16 work on them. I suspect that some will be delivered
17 tomorrow. A couple necessitated quite a bit of work, so
18 they may be a bit later in the week, but I expect in the
19 next couple of days.

20 MS. HARE: That would be very good. Thank you.

21 Just to repeat our schedule, then, May 9th for your
22 argument Mr. Rodger, May 24th for the submissions of other
23 parties, and June 1st for your reply argument.

24 MR. RODGER: Yes, Madam Chair.

25 MS. HARE: Thank you. Are there any other matters?

26 No? Thank you very much.

27 --- Whereupon the hearing concluded at 3:12 p.m.

28