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July 4, 2011

SENT VIA EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario
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Dear Ms. Walli:

Re: Nishnawbe Aski Nation ("NAN") Interrogatories directed to Hydro One Remote Communities Inc. ("Remotes")
Application for Licence Amendment EB-2011-0021
Hydro One Remote Communities Inc.
Our File No.: 10041

NAN hereby offers its submissions on Remotes' Application for Licence Amendment EB-2011-0021.

Although Remotes serves a number of non-Aboriginal communities, the First Nations communities to whom Remotes provides electrical power are Bearskin Lake, Big Trout Lake, Deer Lake, Fort Severn, Gull Bay, Kasabonika Lake, Kingfisher Lake, Landsdowne House, Marten Falls, Sachigo Lake, Sandy Lake, Wapakeka, Weagamow, and Webequie.

NAN's comments and evidence are intended to outline the position of the First Nations communities served by Remotes.

As noted herein, NAN seeks an *interim order* from the Board directing the parties to conduct consultations with a view to them negotiating an agreement on acceptable exemptions from one or more of the eight sections in the Code identified in Remotes' Application and evidence, filed March 1, 2011.

It is NAN's position, as well as the evidence of Remotes in its information in response to NAN's interrogatories, that there has been no consultation to date with Band Councils concerning the proposed exemptions from the Code. Nor has any agreement been reached between any Band Councils and Remotes relating to any exemptions from the Code.

NAN submits that the constitutionally-recognized "Duty to Consult" as well as the "Duty to Accommodate" are called into play by Remotes' Application because Remotes seeks to limit rights and interests which the residents of NAN communities would otherwise enjoy.

1. Confusion relating to the Code sections from which Remotes seeks exemption

The Application from Remotes requests exemption from eight (8) sections of the current Distribution System Code ("DSC" or "Code") in the areas of Payment Arrangements, Opening and Closing of Accounts, and Standard Timelines, specifically:

- Section 2.7.1.2 Payment Arrangement Down Payment of up to 15%
- Section 2.7.2 Minimum Length of Payment Arrangements
- Section 2.8.1 Opening and Closing of Accounts, Customer Confirmation in Writing
- Section 4.2.2.3 Expiry of Notice
- Section 4.3.3.1 (a) Deemed Date of Delivery of Notice
- Section 6.1.2.1 Agreement in Writing
- Section 6.1.2.2 Verbal Agreement
- Section 7.10 Reconnection Standards

The Notice of Application and Hearing published by Remotes also states that Remotes "requests that the Board considers [sic] throughout this proceeding additional exemptions from the proposed sections 2.7.1.3 and 2.7.2 of the DSC regarding payment arrangements as they apply to low-income consumers.

In its covering letter (dated March 1, 2011) to the Board, however, which forwarded Remotes' updated Application and evidence for exemptions, Remotes states that "Given the many areas where Remotes requires exemption from the Code, Remotes requests that the Board consider exempting Remotes from the DSC."

Further, on p. 11 of its updated Application and evidence, Remotes states that "Given the nature of Remotes business, and the increasing requirement that the Board standardize customer service rules across the province, Remotes suggests that the continued stringent application of the Distribution System Code to Remotes' service territory is inappropriate and requests that the Board consider exempting Remotes from the DSC."

Because of confusion caused by these additional statements, NAN requested clarification in Interrogatory #12 List 1 whether Remotes was requesting a wholesale exemption from the Code itself.

Remotes responded to Interrogatory #12 List 1 as follows:

> Due to the unique nature of Remotes' customer based and territory, Remotes is unable to follow many of the standard practices outlined in the DSC. Remotes suggests that it would be simpler and more efficient to exclude Remotes from the DSC and only include it where appropriate.

NAN takes the position that the only provisions of the DSC which are currently before the Board for exemption are Sections 2.7.1.2, 2.7.2, 2.8.1, 4.2.2.3, 4.3.3.1, 6.1.2.1, 6.1.2.2, and 7.10

because they are specifically identified in the Notice of Application and evidence filed by Remotes.

If Remotes' Application is to be considered a request for exemption from the Code in its entirety, it would be incumbent on Remotes to provide reasons in support of an exemption from the Code in its entirety. The focus of Remotes' submissions, however, is clearly on the eight (8) sections in the Code specifically addressed in that distributor's Application and evidence.

As a result, NAN's submissions are restricted to the proposed exemption from the eight (8) sections of the Code identified in Remotes' filing dated March 1, 2011.

2. Remotes failure to participate directly in previous proceedings in which the amendments were discussed, articulated, and introduced by the Board

NAN submits that the failure of Remotes to participate in certain OEB proceedings should act as a bar to the requested exemptions from the Code.

The exemptions requested by Remotes relate to provisions specifically introduced to deal with the plight of low-income consumers, including the inability of such consumers to pay their utility bills in a timely and/or complete manner.

The recent amendments to the Code were the result of a lengthy consultation process which took place in EB-2007-0722 and EB-2008-150. That process also culminated in the release of the Report to the Board on the Low-Income Energy Assistance Program (10 March 2009).

Remotes has confirmed that it did not seek status to participate in EB-2007-0722 directly. Rather, Remotes' affiliated corporation, Hydro One Networks, sought participation in that proceeding on September 17, 2007. Remotes has advised in answer to NAN Interrogatory #5 List 1 that Hydro One Networks "assumed given the unique circumstances of Remotes that any amendments would recognize the need to modify the requirements for Remotes."

In its supplementary information for the same Interrogatory, delivered on June 24, 2011, Remotes states that Hydro One Networks and OEB staff discussed the "unique circumstances" of Remotes and its customer base, and the fact that Remotes' business world would not be able to adapt to standard processes for collections and disconnections.

There appears to be no record of Hydro One Networks raising issues about any exemptions for Remotes from September 2007 and onwards in EB-2007-0722.

NAN submits that the time for Remotes to have raised the issue of any exemptions or changes to the DSC requirements to accommodate the distributor's "unique circumstances"-- and indeed, to outline precisely what those unique circumstances were ---was during the lengthy consultation and amendment process in EB-2007-0722. The same observation would apply to the consultation process in EB-2008-150.

Nevertheless, Remotes failed to do so either directly on its own or indirectly through Hydro One Networks.

Further, Remotes was a member of the Electricity Distributors Association ("EDA") in September 2007, and it remains a member of that organization today.

The EDA participated in EB-2007-0722 and made submissions on behalf of its members in that proceeding. The EDA also made it clear in its submissions to the Board on the proposed amendments that it had consulted with its members relating to those submissions.

Remotes confirmed on June 24, 2011 that at no time during EB-2007-0722 did Remotes advise the Board that the EDA was *not* representing the interests of Remotes in the EDA's submissions.

In answer to NAN Interrogatory #15 List 1, which asked whether Remotes ever advised any Band Councils or Standard A or residential customers prior to March 1, 2011 that Remotes was not in agreement with the amendments to the DSC which resulted from EB-2007-0722 or EB-2008-0150, Remotes advised that it had never done so.

In February 2009, a Staff Report was released to the Board dealing with issues facing low-income energy consumers in Ontario, including the Low Income Energy Assistance Program ("LEAP"). Remotes advises that, in response to that Report (which was dated March 10, 2009), it notified the Board in mid-April 2009 that it would be seeking an exemption from LEAP when it was put into effect. Remotes advised in April 2009 that, because most of its customers were defined as low income consumers, it would be inappropriate to increase their rates to provide the funding support for other low income customers in Ontario.

The April 2009 letter makes it clear that Remotes certainly had the ability by 2009 to file objections with the Board when it deemed it to be necessary. However, apart from LEAP itself, no other objections were made to the Board, including objections directed at the proposed amendments to the Code.

Further, despite the April 2009 letter from Remotes, it appears, based on Remotes answers to NAN's interrogatories, that Remotes has abandoned its opposition to participating in LEAP because Remotes has since contracted with the Ontario Native Welfare Administrators' Association as its lead agency to administer LEAP in First Nations communities.

Given the above, it is clear that neither Hydro One Networks nor the EDA advised the Board during the lengthy consultation process in EB-2007-0722 or EB-2008-0150 of the specific concerns of Remotes or that Remotes would be seeking (a) exemption from the very provisions that were being introduced to assist low-income customers or (b) exemption from the DSC in its entirety.

NAN submits that well-established legal principles, including the doctrine of *res judicata* and *issue estoppel* confirm that the time for Remotes to have raised objections to the proposed amendments to the Code would have been during the consultation processes in EB-2007-0722 or EB-2008-0150.

Indeed, to wait until those extensive processes had been completed and the amendments had been introduced before raising any objections is unreasonable, if not improper.

Equally important, the reason behind many of the amendments resulting from EB-2007-0722 and EB-2008-0150 was to acknowledge and accommodate low-income consumers and to establish province-wide standards to be met by distributors.

Instead of complying with those standards, however, Remotes seeks exemptions from them. Remotes also wishes to introduce collection practices which have *not* been the result of any

consultation and negotiation process with the very customers to whom the DSC amendments are directed.

3. Requested exemptions relating to arrears payment program are contrary to the letter and spirit of the recent DSC amendments: Sections 2.7.1.2 and 2.7.2 of the Code

The DSC sets the minimum conditions that a distributor must meet in carryng out its obligations to distribute electricity under its licence and the *Energy Competition Act, 1998*. Unless otherwise stated in the distributor's licence or Code, these conditions apply to all transactions and interactions between a distributor and all retailers, generators, distributors, transmitters and consumers of electricity who use the distributor's distribution system.

Remotes is the "distributor" of electrical energy for 15 NAN First Nations communities in Northern Ontario. Remotes as a distributor in Ontario, is bound by the Distribution System Code, unless it obtains specific exemptions from the Code.

Remotes states in its updated Application (filed March 1, 2011) that it seeks exemptions from Sections 2.7.1.2 and 2.7.2 of the Code as they relates to low-income customers. On p. 11 of the said Application, Remotes provides reasons for the requested exemptions by stating that it serves a "unique group of customers. The majority of Remotes' customers would likely qualify as low income. Based on Statistics Canada Information for Ontario, Remotes assumes that, for most distributors, low income customers are a minority of the customer base."

With the exception of Remotes' proposal to introduce longer notice periods before any disconnection of electrical service can take place, NAN submits that it is contrary to the purpose of the amendments to the Code for a distributor to be requesting an exemption from the amendments.

As the Board is aware, sections 2.7.1.2 and 2.7.2 were developed to facilitate arrears management programs for low-income consumers. The payment requirements and the time periods in those provisions were the result of extensive consultation between stakeholders and the Board from September 2007 onwards.

Sections 2.7.1.2 and 2.7.2 have been designed to alleviate problems facing low income consumers; Remotes is requesting an exemption from those amendments principally because *many* of its residential customers qualify as low income consumers.

In essence, Remotes is requesting that a more stringent arrears payment program be approved for the residential consumers of Remotes because it is necessary to "avoid extremely high bad debt expenses" and to keep any residential arrears at a manageable level.

This is tantamount to saying that the low-income residential consumers of Remotes need a stricter regulatory framework and arrears payment system than that provided in the Code because, in the absence of such discipline, those consumers cannot be trusted to pay their electricity bills.

In Interrogatory #18 List 1, Remotes was specifically asked to explain how requiring a 50% "up front" payment from a Remote residential customer in arrears, with the remaining 50% being paid during the following four (4) months would "meet the intent of the Board's changes to the DSC"?

Remotes responded by asserting that *the Code's approach* to arrears payment would not meet the goals of reducing customer disconnections by requiring distributors to offer customers flexible payment options and more time and opportunity to make bill payments.

The fact is that requiring Remotes' residential customers to pay 50% of arrears up front to avoid disconnection or to obtain reconnection, with the remaining 50% of arrears being paid during the following four (4) months, is considerably more onerous than the arrears payment program articulated in sections 2.7.1.2 and 2.7.2 of the Code.

Perhaps more importantly, NAN submits that there is *no* evidence to support Remotes' contention that Band Councils and NAN residents in remote communities are even aware of Remotes' professed arrears payment program.

4. No evidence of a "50%-50%" Arrears Payment Program in place in NAN communities

In its Application and evidence, Remotes states as follows at pages 6 to 7:

> Until 2006...[Remotes] entered into long term (one year or longer) payment arrangements with customers...In 2007, Remotes revised the payment arrangement options offered to customers. Remotes now begins the collection process earlier and no longer offers payment arrangements longer than four months to residential customers. Customers are also required to pay at least 50% of the balance owing in order to avoid disconnection...Because Remotes' customers do not tend to pay their electricity bills during the winter months, Remotes does not support offering longer-term payment arrangements with small upfront payments. In Remotes' experience, its customers to not follow the requirements for payment arrangements during the winter months and are left with balances that are unmanageably large the following year...Remotes also found that the Social Assistance Office and Band Office are able to manage requests for support with the smaller balances that result from its current approach than with its previous collection experience.

Contrary to Remotes' statements, as noted above, NAN has not been able to verify Remotes' claims that it introduced a "50%-50%" arrears payment program in or about 2007 or that such a program even exists today.

NAN posed a number of Interrogatories to Remotes which were designed to elicit further information about the alleged "50%-50%" arrears payment program in place since 2007.

None of the responses provided by Remotes confirms the existence of any such program, much less approval of such a program by Band Councils or residential consumers in NAN communities.

In response to Interrogatory #2 List 1 posed by Board staff, Remotes provided copies of two standard form "disconnection notices", one dated March 9, 2011, and the other dated April 6, 2011. Remotes states that the notices contains all information required by section 4.2.2. of the Code.

None of the notices, however, contains any mention of a "50%-50%" arrears payment program in place in communities served by Remotes. Instead, the notices state emphatically to the residential consumer: **you must confirm full payment of arrears by [cited date]. Payments**

can be made by credit card (master link cards), money orders, internet or telephone banking. It is important to keep your account current to avoid disconnection and late payments charges. If we do not hear from you and your account is still in arrears during the trip, disconnection will take place whether or not you are at the property.

In documents provided by Remotes in response to Board Staff Interrogatory #3 List 1; NAN Interrogatory #9 List 1; NAN Interrogatory #15 List 1 (letter from Hydro One, dated January 22, 2010); and the Spring 2011 edition of "Remote Communities", there is no mention of any 50%-50% arrears payment program.

Remotes never filed any documentation in EB-2007-0722 and EB-2008-0150 showing that it had consulted and agreed with NAN communities or that it had even unilaterally implemented any "50%-50%" arrears payment program for residential consumers.

In fact, on p. 2 of its letter to the Board, dated April 17, 2009 (See NAN Interrogatory #9 List 1), Remotes stated that "Remotes regularly negotiates payment arrangements with customers, and has found that customers tend to respond best to payment arrangements spread over no more than four to six months."

NAN submits that this statement is inconsistent with Remotes' Application and evidence that it implemented a "50%-50%" arrears payment program in or about 2007.

NAN has attached as Schedules "A", "B", "C" hereto, are copies of four witness statements from three different NAN communities.

The witness statements are from the following persons and NAN communities:

1. Chief Peter Moonias (Neskantaga First Nation, Attawapiskat Lake), dated 31 May 2011 **(Schedule "A");**
2. Chief Rodney McKay (Bearskin Lake), dated 09 June 2011 **(Schedule "B");**
3. Capital Projects Manager Harry Meekis (Sandy Lake First Nation), dated 30 June 2011 **(Schedule "C");** and
4. Executive Director Joseph Meekis (Sandy Lake First Nation), dated 30 June 2011 **(Schedule "C").**

The witness statements make it clear that these communities are not aware of any 50%-50% arrears payment program on the part of Remotes.

In fact, the ongoing practice of Remotes appears to be to demand *full* payment of any account that has fallen into arrears or a customer will have electrical service disconnected, something which has caused considerable hardship and resentment in NAN communities.

The correspondence which Remotes has produced in answer to Interrogatory #15 List 1 shows that representatives of Sandy Lake First Nation and Webequie First Nation have expressed disappointment, if not antipathy, towards the disconnection and arrears payment practices of Remotes. In late April 2005, the Webequie First Nation advised that Remotes staff or agents were not allowed to enter the reserve without the express consent of the Chief and Council and

that any breach of that requirement could result in charges of trespass under the *Indian Act* or further prohibition.

Also, in situations where power to a residence has already been disconnected, NAN has obtained information from community representatives that demands are often made by Remotes to new occupants that they must pay the arrears of previous tenants to have service reconnected to a residence.

In Interrogatory #20 List 1, NAN requested Remotes to provide copies of all relevant historical and contemporary documents to show that Remotes' own employees have, since 2007, been advised of the details of the collection practices of Remotes which Remote has described in its Application to the Board.

None of the internal documents produced by Remotes outlines or discusses any "50%-50%" arrears payment program. In fact, in the section entitled "Customer Calls in to make Payment Arrangements or to Report Payment", Remotes states that what is to be required of the residential customer is as follows: "Full payment required to avoid disconnection – no exceptions…Must remain consistent, tell all customers the same thing."

5. Opening and Closing of Accounts: Sections 2.8.1, 2.8.2, 6.1.2.1, and 6.1.2.2

The evidence of Remotes concerning the opening and closing of accounts is that the "unique" housing arrangements in First Nation communities (where houses are community assets controlled by Band Councils), that there is a high frequency of customers' moves with as little as 24 hours notice, that there is lack of telephone service and electronic communication, and that these factors make it impossible for Remotes to adhere to certain requirements in the Code.

NAN submits that these factors are overstated, if not exaggerated, by Remotes. NAN communities are tight-knit communities with modern electronic equipment. Messages and information are easily communicated to and from and within NAN communities.

Further, the alleged "high frequency of customers' moves" is not an accurate depiction of the situation in most NAN communities.

In its Application and evidence, Remotes also notes that the First Nations have a tradition of oral culture and suggests that residents do not respond quickly to written requests and that they may not understand the need to sign an agreement for service.

Remotes also advises that even if it is possible to speak to new customers over the telephone, Remotes does not currently have the ability to record and store customer telephone calls.

In NAN's view, there is simply no excuse given the current state of electronic and digitalized technology for Remotes not to have communications equipment which can record and store customer telephone calls. Banks, insurance companies, and many businesses use such technology in their daily operations.

NAN also submits that there has not been any consultation or organized discussion between Remotes and NAN communities concerning exemptions from sections 2.8.1, 2.8.2, 6.1.2.1, and 6.1.2.2 of the Code.

The representatives of First Nation communities served by Remotes who were contacted by NAN for this submission to the Board were not aware of Remotes' application or any alternative collection practices which Remotes claims have been in place for a considerable time.

6. Remotes' request to alter Standard Timeline Sections 4.2.2.3, 4.3.3.1(a), and 7.10

NAN acknowledges that deviation from the notice periods outlined in the DSC, including the expiry of disconnection notices after a fixed period, may be reasonable and warranted given the costs involved in strictly complying with the stated deadlines.

Nevertheless, the process by which the proposed exemptions have been determined by Remotes (or, alternatively, by which Remotes is proposing that they be adopted) has not involved input from Remotes' customers.

There has been no consultation with First Nations communities, there has been inadequate dissemination of information at the community level about any proposals, and there certainly has been no agreement on any proposals.

Accordingly, as noted below, NAN is proposing that the Board issue an interim order directing that consultations between Remotes and NAN representatives take place during the next six (6) to eight (8) months.

7. Disconnection and serious damage to real property in First Nation communities

The witness statements provided by NAN with this submission make it clear that disconnection of electrical services has severe effects on other services in residential buildings, such as water pipes and the structural integrity of such buildings.

Disconnection of service has also compromised the health and safety of certain NAN residents, including the elderly.

The witness statements indicate that elemental damage is caused to homes that are unoccupied and unheated because of the disconnection of electrical service.

A residence to which electrical service has been disconnected can quickly deteriorate such that, for want of payment of modest arrears (which may be owed by a former tenant), the resulting loss to the community in housing assets can be tens if not hundreds of thousands of dollars.

Given that the electrical generation systems in remote communities are self-contained, and that the disconnection of power to a vacated building does not ordinarily result in more power for the remaining residents and Standard A customers, the question arises why Remotes has instituted such a strict disconnection and reconnection policy.

A better policy from the standpoint of the use of public funds would be to provide for continued minimal service to vacant residences to ensure that the integrity of such buildings is not compromised by the absence of electrical service. Once again, NAN communities have witnessed the destruction and deterioration of residences because of problems related to disconnection of service and disputes over who is responsible for paying outstanding arrears. `

8. Financial analysis presented by Remotes in its Application and Evidence

NAN has reviewed Appendix B in the Application and evidence of Remotes filed March 1, 2011. NAN made a number of requests in Interrogatories to obtain more information from Remotes concerning arrears, writing off bad debts, and the like. Not all of the requested information was provided by Remotes.

In NAN Interrogatory #16 List 1, NAN pointed out that, in EB-2008-0232, which was a rate increase application by Remotes, Remotes advised the Board that, in 2007, Standard A customers made up approximately 13% of customers (by number) but they accounted for 93% of outstanding arrears. Thus, residential customers, who represent the vast majority of electricity accounts in remote communities, only accounted for 7% of the total arrears.

In the within proceeding, NAN requested Remotes to provide arrears percentages and aggregate figures for residential customers *and* Standard A customers for the years 2008, 2009, and 2010, so that a more complete and balanced picture of arrears in remote communities could be presented. When the data for Standard A customers were not forthcoming, NAN followed up with Remotes.

Remotes responded to the follow-up onNAN Interrogatory #16 List 1 by stating that "Remotes submits that Standard A arrears and write-off information is outside of the scope of this proceeding."

Thus, despite NAN's repeated requests, Remotes has refused to provide any arrears information for Standard A customers.

NAN is disappointed with this response from Remotes because the issue of what Remotes considers relevant for the purposes of the relief in its Application is *not* necessarily the same as that which NAN considers relevant to make NAN's responding submissions.

With respect to Appendix B in Remotes' Application and evidence, which identifies residential arrears on a monthly basis for the years 2003 to 2010 inclusive, the Appendix raises issues about the reliability of Remotes' records and Remotes' claims that its recent collection practices (i.e. the alleged "50%-50%" arrears payment program, different notice periods for disconnection, etc.) have slowly but steadily reduced residential arrears.

Remotes also relies on Appendix B to suggest that the continuation of its current collection practices will have a significant effect on arrears and that those practices are to be preferred to the measures in the amended DSC and possibly the LEAP.

Concerning the reliability of Remotes' information, NAN notes that the section in the Appendix from June to August 2005 is blank. However, during that period, the receivables of Remotes apparently dropped from $3,155,878.89 in May to $2,660,933.30 in September, a reduction in three months of $494,945,59.

Remotes does not explain why there is no data for June, July, and August 2005. Further, a reduction in receivables of $494,945.59 could not be linked to the alleged "50%-50%" arrears

payment program of Remotes because it would not have existed at that time. Remotes does not advise whether this significant decline in arrears is simply due to a write-off of debt.

NAN also notes that the arrears in the 0-22 Days column for the years 2003 to 2010 are fairly consistent; they are approximately $300,000. NAN assumes this is the basic revenue from electricity consumed by residential customers each month. The figure of $300,000 per month would suggest a total average revenue from residential sales of energy of $3.6 million per year.

In the absence of Remotes providing corresponding data for Standard A and other commercial/institutional customers, NAN can only estimate that the residential revenues, as presented the Appendix B represent approximately 10.4% of the overall revenue for Remotes' annual operations.

Accordingly, Remotes proposes to introduce a stricter arrears payment program for NAN communities in circumstances where, on an aggregate basis, residential consumers do not account for a large percentage of annual revenues and where Standard A customers account for the bulk of arrears. In this respect, Remotes proposes to impose on the poorest group of customers the most stringent collection practices.

Remotes claims that its collection practices, which include a "50-50%" arrears payment program introduced in 2007, is responsible for the reduction in arrears as shown in Appendix B. However, there is no indication in the Appendix of such a gradual and consistent reduction in arrears. In fact, rather than a gradual reduction, arrears are reduced most dramatically in single months at certain times of the year-- the times when Remotes appears to visit remote communities to disconnect residential customers or refuse reconnection of service.

In NAN's view, the figures in Appendix B are more consistent with the evidence in the witness statements from First Nation representatives-- that is, that avoiding disconnection and obtaining reconnection are made dependent by Remotes on a customer's 100% payment of any arrears, with no option of an acceptable arrears payment program being presented.

The irregular pattern of arrears reduction raises many questions which Remotes has not answered. In 2007, the arrears were reduced by $1.74 million. However, if one looks at the arrears in Sept, 2007 ($1,763,091.91) and October 2007 ($1,106,045.47), there is a huge deline of $657,046.50 in one month. The source of this reduction in receivables over one month is not explained by Remotes. One thing is clear, however. It could not be the result of an arrears payment program.

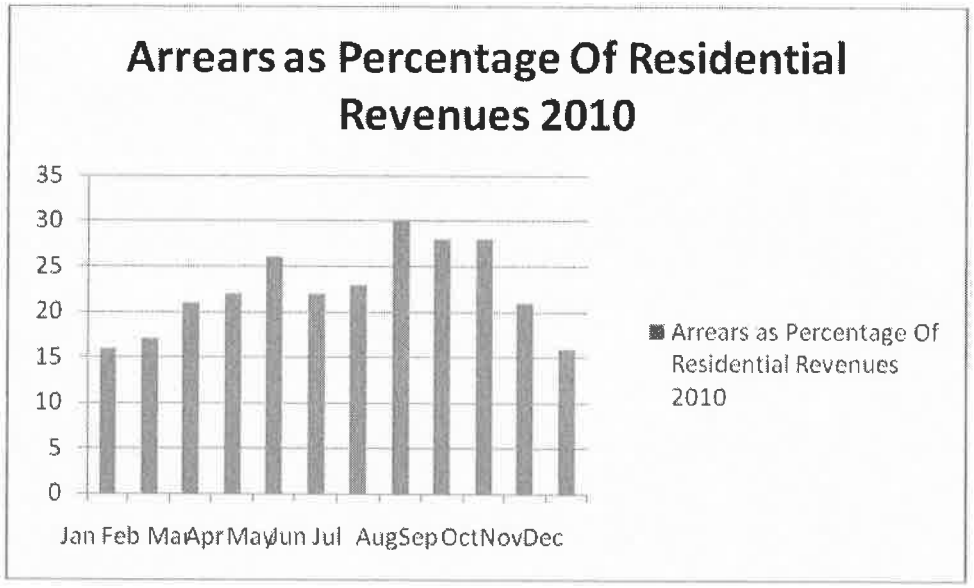
Using Remotes' estimate that 540 customers are typically in arrears at any given time, the reduction in residential arrears of $657,000 in one month would have required each of those customers to have paid $1206.00. This is an extremely unlikely scenario and it would be equally unlikely to conclude that a large number of residential customers would have paid much more than $1200 while others would have paid much less.

In 2008, a reduction of approximately $700,000 in receivables is shown in Appendix B. In the one month period from March to April, there was a reduction of $195,945.20 and in the one

month period from April to May there is a further reduction of $327,677.60. There is another significant reduction from August to October 2008.

In 2009, there was an overall reduction in receivables of $800,000, with large reductions occurring between March and April ($185,539.70), April to May ($181,774.10), and May to June ($142,995.30). Finally, in a single month from September to October, there was a further reduction of $320,701.17. Once again, these figures do not appear to be consistent with the implementation of any arrears payment program. Instead, they appear to be consistent with NAN residents being presented with an ultimatum of paying 100% of any arrears, failing which disconnection will occur or reconnection will not take place.

In 2010, the overall reduction in arrears was a very modest $300,000, with most of the reduction occurring in late Spring. If the percentages of receivables over 119 days are shown in graphic form, we observe the following pattern:



The actual monthly figures for receivables older than 119 days are as follows: January 16%; February 17 %; March 21%; April 22 %; May 26%; June 22 %; July 23 %; August 30%; September 28%; October 28 %; November 21 %; December 16 %.

In 2010, and in every other year presented in Appendix B, one can observe that the percentage of "receivables over 119 days to total receivables" fluctuates with the seasons. This is because more electricity is used in winter in the north than during the summer months. That consumption pattern is different from the consumption pattern in Southern Ontario.

As a result, the receivables outstanding over 119 days are a lower percentage of total receivables when compared to the other categories (i.e. 0-21 days, 22-59 days, and 60-119 days) in December and January of each year. This recurring pattern would seem to have little to do with the alleged arrears payment program and more to do with the draconian practice of demanding 100% payment of any arrears to avoid disconnection or, alternatively, to obtain reconnection in situations where the new tenant would not otherwise responsible for the arrears relating to the residence. The reduction may, instead, be linked to other payments made to Remotes by Band

Council offices, Aboriginal Affairs and Northern Development Canada (formerly INAC), and/or write offs.

9. Low Income Energy Assistance Program ("LEAP")

Although Remotes indicated to the Board in April 2009 that it would be requesting an exemption from the specifics of the LEAP and that, in Remotes' view, its current collection practices already accomplished the intent of the Board's proposed LEAP, NAN submits that nothing could be further from the truth.

NAN also notes that, given the answers by Remote to NAN's Interrogatories, it would appear that Remotes is no longer requesting an exemption from LEAP. In fact, Remotes has identified a lead social agency to administer LEAP for remote communities.

Remotes has identified the Ontario Native Welfare Administrators' Association as the lead agency to administer the LEAP, presumably in the First Nations communities served by Remotes. Unfortunately, NAN's inquiries with selected First Nations communities have revealed that they are not aware of this agency's role in administering LEAP for Remotes. Once again, there appears to have been little or no discussion between Remotes and First Nation communities concerning LEAP.

In its introduction to the LEAP Financial Assistance Manual, under the heading "Purpose", the Board states:

> As set out in the *Report of the Board: Low Income Energy Assistance Program*, issued in March 2009, the Board believes that emergency financial assistance for low-income energy consumers should be offered *on a consistent basis across the province. In particular, low-income energy consumers should have access to similar services irrespective of where they live and the distributor that serves them* [emphasis added].

The Manual clearly indicates that it is the intention of the Board that access to LEAP should be available to all low income consumers in Ontario.

In 2008, the Board started a consultation with stakeholders to consider the need for, and nature of, policies that could provide financial and other assistance to low-income energy consumers. During that consultation, the Board identified three components of a "Low-Income Energy Assistance Program" or LEAP, that could assist low-income energy customers better manage their bill payments and energy costs. These components are: (1) emergency financial assistance; (2) customer service rules; and, (3) targeted conservation and demand management programs.

NAN submits that Remotes' request for specific exemptions from the Code would all but eliminate considerations under (2) customer service rules-- particularly with regard to arrears payment programs.

As noted above, the amendments to the Code now give residential customers who have an outstanding balance of less than two (2) months average billing at least five (5) months to pay their arrears, provided that they pay at least 15% of the outstanding balance at the outset.

For customers owing an equivalent of two (2) months average billing or more, the DSC would give them at least ten (10) months to pay the arrears, provided that they pay at least 15% of the balance at the outset of that payment period.

LEAP is a program which offers modest financial assistance to low income consumers who are having serious problems paying their utility bills. However, LEAP also involves an "eligibility assessment process" for financial assistance which would be administered by a social agency working with the distributor.

In order to be eligible for a LEAP grant, an applicant must satisfy *all* of the following criteria:

(i) the applicant must be an existing customer of the utility providing the funding, or an existing customer of a unit sub-metering provider operating within the service area of the utility;

(ii) the applicant must reside at the address for which there are arrears; and

(iii) the applicant must have a pre-tax household income at or below the Statistics Canada Low-Income Cut-Off (LICO) + 15%, taking into account family size and community size.

The LICO figures to be used in assessing eligibility are set out in Appendix B to the Manual.

In screening applicants, lead agencies are directed by the Board to consider the following:

(i) Receipt of financial assistance should allow the applicant to maintain or reconnect energy service, in order to promote the sustainability of the customer's connection;

(ii) The applicant has demonstrated a prior attempt to pay the bill. The service provider, as appropriate, can be contacted for information about the applicant's payment history if necessary. Agencies should consider future sustainability of the applicant's connection in addition to past payment performance; and

(iii) The applicant is in threat of disconnection or has been disconnected. Agencies should focus on providing *emergency* assistance, but will need to balance this with early intervention (e.g. assistance to applicant in arrears but who have not yet received a disconnection notice or been disconnected).

The maximum amount of the financial assistance grant payable in a year under LEAP for a residential consumer is $500.00, or $600.00 for a consumer in arrears using electric heat.

Section 5.2 (i) of the Screening Guidelines states that the making of the grant should *allow the applicant to maintain or reconnect energy services.* This is an important requirement on the part of the social agency processing an application.

NAN submits that Remotes has failed to consider how its alleged "50%-50%" arrears

payment program could adversely affect (a) the eligibility of low-income residential consumers to receive financial assistance under LEAP and/or (b) reduce the period during which they can pay the balance of arrears.

Sections 2.7.1.2. and 2.7.2 of the Code require only 15% of arrears to be paid by a low-income consumer to enter into an arrears payment program and avoid disconnection or, alternatively, obtain reconnection.

A low-income resident seeking financial assistance under LEAP who is two or more months in arrears and who requires a $500.00 grant to pay the 15% up front (or, alternatively, a $600.00 grant if the resident is using electric heat) would, upon receiving such a grant, be able to enter into an arrears payment program for the repayment of arrears totaling $3333.33 (or $4000.00 if the resident is using electric heat). The resident would also be given (10) months to pay the balance of the arrears. The resident, of course, would have to establish that the grant from LEAP was necessary to avoid disconnection or, alternatively, to obtain reconnection.

However, a resident in the same situation facing Remotes' alleged "50%-50%" arrears payment program would be worse off. If such a resident required a $500.00 (or, alternatively, a $600.00 grant) to avoid being disconnected or to obtain reconnection because the resident required such funds to pay the *minimum* 50% payment required by Remotes to enter into Remotes' arrears payment program, only those residents owing a total of $1000.00 or less in arrears (or $1200.00 for those residents using electric heat) would actually be assisted through LEAP. Further, the resident would only have four (4) months under Remotes' program to repay the other 50% of arrears.

A resident with total arrears in excess of $1000.00 (or $1200,00 in the case of electric heat consumers), and who needed *more* than $500.00 or $600.00 to make the 50% "up front" payment to Remotes and avoid disconnection or obtain reconnection, may not be assisted by LEAP. In fact, applying LEAP's own criteria, the resident could very well be *denied* funding if the resident could not demonstrate that it had access to additional funding to make the required 50% payment to Remotes to avoid disconnection or obtain reconnection.

Thus, when Remotes' alleged "50%-50%" arrears payment program is evaluated in conjunction with the requirements of LEAP, it effectively discriminates against the poorest residents living in remote communities.

The third element of the LEAP program-- targeted conservation and demand management programs—could also be adversely affected if Remotes is successful in its application for exemptions from the Code. Targeted conservation programs have been identified as central in assisting low income energy consumers because they will help reduce consumer use of electricity and lower monthly bills. Remotes has not provided any evidence or information on how its proposed exemptions may impact conservation and demand management programs or how such programs will actually benefit low-income residential consumers.

Given that such programs may be of limited financial assistance to residents in NAN communities served by Remotes, NAN submits that it is even more important for the Board to scrutinize and avoid the negative impacts which Remotes' proposed exemptions can have on financial assistance for the poorest of Ontario's residents.

10. Duty to Consult and Accommodate where the rights and interests of First Nations will be affected

The Supreme Court of Canada and other courts have confirmed the duty of the Federal and Provincial Crowns to consult Aboriginal peoples in circumstances where their title or rights claims may be impacted by actions to be taken by the Crown or its agents. Key decisions rendered by the Supreme Court of Canada include *Haida Nation v. British Columbia (Minister of Forests)*[i] and *Taku River Tlinget First Nation v. British Columbia (Project Assessment Director)*[ii].

The duty to consult is founded on the principle of the honour of the Crown, that is, the Crown's duty to act in an honourable manner with Aboriginal peoples and to ensure that its promises and commitments are kept. The duty to consult arises wherever the Crown has actual or constructive knowledge of the existence or potential existence of Aboriginal right or title which may be adversely affected by the Crown's activities and requires that the Crown enter into negotiations involving fair dealing and reconciliation as it relates to the rights and interest of Aboriginal peoples.

The duty to consult also includes situations in which the Crown intends to permit a third party to undertake a project which could (a) affect the existing rights of Aboriginal peoples or (b) affect claims by Aboriginal peoples which have not yet been determined.

There are actually two parts to the broad duty to consult imposed on the Crown-- the duty to consult *and* the duty to accommodate. In *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*[iii], the Supreme Court of Canada held that the duty to consult and accommodate applies to those First Nations groups who signed numbered treaties in Canada and other areas of Canada. In that case, the Supreme Court of Canada considered that the Crown had a duty not to act until any First Nations group which would be impacted by proposed government action had not only been consulted, but that the groups' concerns had been accommodated.

The Crown remains solely responsible for the impacts which third parties under its control may have on Aboriginal interests.

If the duty to consult is not satisfied in an approvals process, it may be challenged in court and, depending on the circumstances, any approval granted by a Board or tribunal may be subject to cancellation or other order as the Court may consider appropriate. In short, Canadian courts have made it clear that a consultation process must be adequate from the outset of any approvals process and the duty to consult must be discharged in good faith.

Since the Supreme Court of Canada confirmed the Crown's duty to consult, there have been cases where First Nation groups have successfully challenged the measures taken by the Crown to fulfill this duty. In *Musqueam Indian Band v. British Columbia (Minister of Sustainable Resource Management)*[iv], the B.C. Court of Appeal found that the Province had breached its duty to consult and accommodate the interests of the Musqueam Indian Band in the sale of Crown-owned golf course to the University of British Columbia.

The Band had complained that it had not been properly consulted with or accommodated in the sale of the land, which was subject to land claims being asserted by the Band. Although the Band was not successful in its initial court challenge, the Court of Appeal concluded that the Crown's offer of economic compensation to the Band did not meet the duty to consult imposed on the Crown. In the result, the Court ordered that the Order-in-Council authorizing the sale of the land to the University be suspended for a period of two years so that the parties could have meaningful consultation with a view to accommodating the interests of the Musqueam Band. If such consultations failed, the Band also had the option of bringing the matter back to the Court.

In 2007, the Federal Court provided additional insight into the duty to consult by confirming that the duty extends to processes which may ultimately modify, amend or alter a proposal which has initially been the subject matter of consultation and accommodation involving First Nations groups.

In *Ka'a'Gee Tu First Nation et al. v. The Attorney General of Canada and Paramount Resources Ltd.*[v], the Federal Court held that certain provincial ministers and the Mackenzie Valley Land and Water Board had breached the duty to consult by failing to include a First Nations group in the final decision-making stage of the Board where modifications to a licensing proposal by Paramount Resources Ltd. had been made in discussions between government ministers and the Board which did not involve input and accommodation of the First Nations group.

The Court made it clear that even though the Ka'a'Gee Tu First Nation group had been properly consulted under provincial statutes governing the licensing proposal, the failure to involve the First Nation group when the recommended approval of the project was being modified in final meetings between provincial ministers and the Board constituted a breach of the duty to consult. As a result, the parties were ordered to engage in a process of meaningful consultation to ensure that the concerns of the First Nations group were identified and, if necessary, accommodated before any licence was issued to Paramount Resources Ltd.

The duty to consult with First Nations groups, therefore, extends beyond initial and ongoing consultation during an approvals process. It must also be part of the final stages of the decision-making process of the supervising Board or tribunal, particularly if modifications, amendments, or terms or conditions are to be made or imposed on the original proposal.

Canadian courts have articulated a number of principles relating to the duty to consult. Some of the more important principles are as follows:

1. The scope and content of the duty to consult and accommodate varies with the circumstances of each case. However, the scope of the duty is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon a right or title claimed. Consultation must occur in good faith and in a timely manner;

2. The Crown's assessment of what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and Aboriginal peoples with respect to the interests at stake is to be judged by the standard of correctness;

3. The process by which the Crown discharges its duty to consult is to be judged by whether the Crown has made reasonable efforts to inform or consult;

4. While the Crown may delegate procedural aspects of the duty to consult to third parties, ultimate legal responsibility for ensuring that proper consultation and accommodation occurs rests with the Crown, be it federal or provincial;

5. Third parties who do not wish their undertakings, projects, etc. to be challenged in court have an interest in ensuring that the Crown properly discharges its duty to consult both thoroughly and effectively;

6. The duty to consult is an ongoing process. The duty is not satisfied merely by the giving of notice of an undertaking, project, etc. that may adversely impact Aboriginal interests. Where new evidence or information is produced during a statutory approvals process, it may be necessary to hold further consultations with First Nations groups to properly discharge the broad duty to consult and to ensure that any necessary accommodation of Aboriginal concerns actually takes place;

7. Where an undertaking, project, etc. for which government-approval is sought has been altered, amended or changed by the approval process, or where terms or conditions are recommended as part of any approval, and Aboriginal Interests may be affected by such things, further consultation with First Nations groups should take place before any approval is granted;

8. First Nations groups should be provided with adequate resources to obtain independent legal and consulting advice and to participate in consultation in a meaningful way; and

9. Where potential interferences with rights or title that have previously been established—either by the Courts or pursuant to land claim agreements or treaties—may occur, the duty to consult must first be discharged and the Crown may also be under a more onerous duty to justify that the proposed infringement is acceptable in all of the circumstances and to establish that any infringement on such rights or title will be minimized. Existing treaty and similar rights cannot be infringed or restricted other than in conformity with constitutional norms.[vi]

11. Requested relief in this proceeding

Given that the overwhelming evidence indicates that no 50%-50% arrears payment program was ever presented to NAN communities for consideration, comment and/or approval, and that such a program is clearly more onerous than the standards outlined in the Code, NAN opposes the approval of any such exemption or alternative to the arrears payment program in the DSC.

NAN also submits that it is essential to have a negotiated agreement on the issue of procedures for disconnection/reconnection practices (and any relevant notices for same) if Remotes wishes

to deviate from the opening and closing of accounts sections in the Code and alter standard timelines provided in the DSC.

Given the constitutionally-recognized "Duty to Consult", which not only involves a duty to consult, but also an obligation to accommodate, NAN is requesting that the Board issue an "interim order" under section 21.(7) of the *Ontario Energy Board Act, 1998,* as amended, to have consultations held between Remotes and NAN representatives to discharge this duty.

In NAN's view, such consultations are necessary because of the impact on First Nations rights and interests which the proposed exemptions will no doubt have.

Further, under section 21(1), the Board may, at any time on its own motion and without a hearing give directions or require the preparation of evidence incidental to the exercise of the powers conferred on the Board by the *Ontario Energy Board Act, 1998,* or any other statute.

In NAN's respectful submission, there is an opportunity for the Board to ensure that any proposed exemptions from the Code protect the interests of the consumers of Remotes, that they are the result of actual discussions between the distributor and its customers, and any exemptions are truly consistent with the letter and spirit of the recent amendments to the Code.

NAN is proposing that the discussions between Remotes and NAN representatives take place during the next six (6) to eight (8) months and that if no agreement is reached between the parties that the matter be remitted to the Board for determination.

All of which is respectfully submitted to the Board.

Yours very truly,
Barrister & Solicitor
Douglas M. Cunningham
Douglas M. Cunningham
DMC/am

c: Grand Chief Stan Beardy
c: Mel Stewart (NAN Consultant)
c: Michael Engelberg (Assistant General Counsel, Hydro One Networks Inc.)

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[i] 2004 SCC 73, [2004] S.C.R. 511, November 18, 2004.
[ii] 2004 SCC 74, [2004] 3 S.C.R. 55, November 18, 2004.
[iii] 2005 SCC 69, [2005] 3 S.C.R. 388, November 24, 2005.
[iv] [2005] B.C.J. No.444; [2007] C.C.S. No.8812.
[v] 2007 FC 763.
[vi] Section 35 of the *Constitution Act, 1982,* being Schedule B to the *Canada Act, 1982 (U.K.)*, 1982, c. 11.

SCHEDULE "A"
(Neskantaga First Nation)

Interview with Chief Peter Moonias, Neskantaga First Nation, regarding Hydro One Remote Communities Inc. ("Remotes") Application for Exemption from certain Distribution System Code ("DSC") amendments, and from the Distribution System Code

1. Were you aware of Remotes' application for exemption from certain sections in the DSC or from the Code in its entirety? Did you receive any information regarding Remotes' application?

   No. I am not aware of any information regarding this.

2. Did Remotes discuss this application with you?

   No. Not us.

3. Did you agree to the content of the application?

   No. No if there was any agreement between us it would simply be that they can't cut people off during the winter months.

4. How are disconnects handled in your community?

   People from Remotes come in and disconnect. To get reconnected you have to pay 100% up front to Remotes or you are out of luck. They disconnect people at any time, even during the winter months. If we had any kind of agreement, they would not disconnect people in the winter.

5. How are repayment programs handled? Who is involved?

   The only approach I know that is taken by Remotes is 100% up front and, if not, you are out of luck.

6. How do people repay their arrears?

   They sometimes can't. When that is the case the house becomes empty. The people who have moved out go to live with their parents or other relatives and the house is left empty. No one else can live in the house until the bill is paid. Remotes won't connect it until the bill is paid in full. Even in some instances where the Band has to take over a house, we have to pay the outstanding bill before we get electricity.

7. Does the Band pay or make loans to pay for electrical energy arrears?

   No, we don't give loans to households. We won't pay electric bills for people.

8. Is there another source of payment for arrears that you are aware of?

   I am not aware of any. I am not aware of any plan with Remotes, just 100% up front or you are cut off. No one can live in that house until the bill is paid. If you were to move and leave a bill, I can't move in to that house until the bill is paid. Now if you were in an apartment in Sioux Lookout, and you moved and left an electric bill, that bill goes with you. I wouldn't have to pay your bill before I could get electricity. Here on the reserve I have to pay or I can't move in.

9. Do you agree with Remotes' application for exemption?

   I don't think they should cut people off in the winter. Our houses are being held hostage under the system used by Remotes.

10. Do you agree with Remotes' regulations regarding disconnections, reconnections, arrears and repayment requirements?

    As a result of their approach, a number of our houses have been flooded or pipes burst and buildings have deteriorated. We can't use these buildings without electricity and they fall apart.

    I know of one house that has been empty for eight years.

11. Do you have any questions, direction, or advice?

    If you live in Sioux Lookout and someone moves out of an apartment and you move in, you don't have to pay their electricity bill before you get electricity. Why should it be any different here?

12. Were there negotiations or consultation with Neskantaga Band Council about notification arrangements for disconnection. No — Notices are sent to us and that it —.

13. Were there negotiations or consultation with Neskantaga Band Council about the procedures for disconnection. No —

14. Were there negotiations or consultation with Neskantaga Band Council about issues relating to repayments (including arrears programs). No —

Statement of: Chief Peter Moonias, Neskantaga First Nation, Attawapiskat Lake

Date May 31 2011

Witness Dennis Forbes

May 31/2011

BEAMISH MACKINNON

Barristers & Solicitors

CATHERINE M. BEAMISH * • DANALYN MACKINNON • MICHAEL McCARL • MATTHEW ANGECONEB

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SCHEDULE "B"
(Bearskin Lake First Nation)

Witness Statement : Chief Rodney McKay, Bearskin Lake First Nation, regarding Hydro One Remote Communities Inc. ("Remotes") Application for Exemption from certain Distribution System Code ("DSC") amendments, and from the Distribution System Code

1. Were you aware of Remotes' application for exemption from certain sections in the DSC or from the Code in its entirety? Did you receive any information regarding Remotes' application?

   No.

2. Did Remotes discuss this application with you?

   No. I don't remember receiving any.

3. Did you agree to the content of the application?

   Of course they never discussed it with me. I didn't.

4. How are disconnects handled in your community?
   I guess they just send us letter ahead of time to the band council. And I am sure they write letters to the individual. But here in the band council we have a list of names that are behind in their accounts and that would be disconnected when they come in, they would mention times, when is it May and September or October one of those, but twice a year. And of course individual know. We try to tell them here and then they, the households attempt to pay up to date. But I would assume the individuals named in the accounts, they are probably talking to Hydro One but I am just assuming anyway. I think they might be talking to them about paying later or something, I'm just assuming. But as far as I know, they never told us about this fifty percent down and payment through a number of months. Not to me anyway. They never bring it up, because we were speaking to Hydro One here a couple of weeks ago to the latest disconnection and our housing portfolio guy George Kam pleaded with them not to do this because the family was poor and couldn't pay I am not sure they responded the way we

wanted them to respond to that. They didn't mention this repayment plan either. Even about the 50% we never heard of that. And they did disconnect people.

And there was an elder that we are concerned about. There were a couple of elders living in there, and the person named was out of town, he couldn't address the disconnection because he was in Sioux Lookout. But he had an elder who was staying with him (in his house in Bearskin Lake) who had a medical problem, a bad medical problem. And we needed time to ..... ah this person was going in and out (of Bearskin Lake) sometimes he would be medivaced by his doctor to the new hospital (in Sioux Lookout) and when he came back, we coudln't get a place for him. And then as I was saying he was staying at this other elders place and he got sick after the place was disconnected. He used a coleman stove for cooking and candles in the place because they just came in and disconnected. That is just one example of what happened here. This is a few weeks ago in May. A few weeks ago and they found him, they found that he had to be sent out again because since the place didn't have electricity he couldn't take care of himself properly. Like for eating and lighting for him to take medication. He got medication to use every day at different times a day, and if he's got no lighting or anything like that it affected his medical condition greatly and he had to be sent out again. This is just one example I am telling you about.

Hydro one didn't listen to the First Nation when we spoke on his behalf for special consideration to keep the power on.

I wanted to make more comments on question number four. They laughed at me when I said that we had communications problems when I spoke to Mr. I forget his name, and a bunch of them got on the phone at Remotes in Thunder Bay and tried to tell us that their way was the best and that was the only way. I mentioned that people here had difficulty taking care of their billings because they don't speak the language, And they are over there and it is remote here, and they told us you shouldn't have a problem.

I told them that people who are in Thunder Bay can respond to their billings because they are over there, you know, and they (Remotes) tried to tell me that everywhere it is the same. You can't phone around to discuss your bill they are telling us.

The billings are the same way. I was trying to get through to them that some of our people don't speak the language (English). But they are trying to portray everyone the same in Ontario, which isn't the case. That is what they were

telling us you know, you guys aren't going to get any special treatment because you live in the North and English may not be your first language. They told us right here.

5. How are repayment programs handled? Who is involved?.

I don't know of any myself. We never heard of repayment plans, that I know of anyway.

6. How do people repay their arrears?
I am not sure. I know I try to pay my bills before the disconnection. I use the computer but not everyone has access to a computer. They pay with a money order sometimes. You have to send the serial number of the money order. They fax copies of the money order.

We get notice two days before. They used to take payment when they came in to disconnect. Now the policy is no payment when they come in to disconnect. It used to be we could pay when they came in but they did away with that.

But after they come in and you are disconnected you have to pay all your arrears before you can get connected again.

The problem is that if the building isn't connected, after six months the Building has to be inspected again, that is additional cost. Usually after six months the band gets the building back in its name, and we have to pay for the inspection and re connection.

7. Does the Band pay or make loans to pay for electrical energy arrears?

No

8. Is there another source of payment for arrears that you are aware of?

I don't know. I am not aware of any.

9. Do you agree with Remotes' application for exemption?

I do not. They never used their policy here anyway.

10. Do you agree with Remotes' regulations regarding disconnections, reconnections, arrears and repayment requirements?

There are two sides to this. I don't agree with the policy that you have to pay 100%. It's the only one that I know of.

We did not know they had a policy of 50% and four months to pay. I don't agree the 50% arrangement if there is a way for low income people to only have to pay 15% with several months to pay. I prefer that way.

11. Do you have any questions, direction, or advice?

When we became a reserve one of the reasons we got a reserve was the government was going to look after our social and economic needs. It said that in the order in council. Sometimes we think they should be looking after all of our needs, for everything. That's not the way it is. That has never been pushed with both levels of government. I think we should be getting special status because even though Hydro One has moved away from the government now, they are still part of the province. Even though they are trying to run it like a business, instead of the way it was before it was divided in to several groups, we still think it is the provinces agency, and we should get special consideration at our Reserve Bearskin Lake) under the terms of the order in council.

Question: Have you had any problems because of lack of electricity in the buildings with pipes freezing or things like that?

Yes. We pay a lot of money because of that. You normally want to heat up the building to keep mould out of there. I don't know if there are any issues with the building shifting because of lack of heat and all. I don't know why they have to inspect it again.

Question: You mentioned the elder who was living in a house where the electricity was shut off, and was forced to use a Coleman stove for cooking and candles for light, and he got sick, did you talk to Hydro One Remotes about that?

No, this happened just within the last month, in May (2011).

There is such a thing as subsidy for Hydro One Remotes and we would like to take a closer look to see if it is really advantageous to us. They are trying to get us to move away from that so we don't get the subsidy.

We would like to get more information on the subsidy to make sure that our rates are lower than the rates generally in Ontario.

Fifteen years ago we had an "in lieu of taxation" in place like in a city for the site of the generation station. Since the installation of the new generating system, in 2001, they don't want to pay that fee. I think there were only four remote communities that had an agreement like that.

Even though we talked to them about it they don't want to pay that anymore. When I talk to them they say they are talking about it, but that it is up to the "President". Those things are not in the questions but we have been talking about a special relationship with Hydro One remotes and that should be part of it.

Question: do you believe there needs to be a negotiated resolution for these kinds of issues regarding billings and disconnections etc..

Yes.

Question: There will be a proposal within our brief that there needs to be a negotiation between the remote First Nations and Hydro One Remotes on these issues. If you approve we will go ahead with that idea.

Yes.

12. Were there negotiations or consultation with Bearskin Band Council about notification arrangements for disconnection.

No. They do send a letter telling us, the Band Council, and warning individuals but they never told us that is the way they were going to do things.

13. Were there negotiations or consultation with Bearskin Band Council about the procedures for disconnection.

No.

14. Were there negotiations or consultation with Bearskin Band Council about issues relating to repayments (including arrears programs).

No.

Statement of Chief Rodney McKay, Bearskin Lake First Nation

Witness

Date June 9/10

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SCHEDULE "C"
(Sandy Lake First Nation)

Witness Statement Regarding Hydro One Remotes Application for Exemption from the distribution System Code amendments and from the Distribution System Code.

Sandy Lake Witness statements of Harry Meekis, Capital Projects Manager, Sandy Lake First Nation April 20, 2011

1. **Were you aware of the application for exemption? Did you receive any information regarding the application?**
   (See response of Joseph C. Meekis.)

2. **Did HORCI discuss this application with you?**

   (See response of Joseph C. Meekis.)

3. **Did you agree to the content of the application?**

   (See response of Joseph C. Meekis.)

4. **How are disconnects handled in your community?**

   We get a letter, for example this one says the following accounts will be scheduled for disconnection, they have been cancelled. This usually means that the triplex and meter are still there. When they come to do this disconnect they will take the meter and the triplex (line to the pole) and disconnect the house. They claim this is for safety reasons, While it is disconnected, the meter and line are physically removed, however, the arrears continue to grow with service charges and interest. When a house is to be reconnected, if payment is made, it must be in full compliance. Hydro One remotes does a 'layout" in which they estimate the materials and costs for reconnection, the Hydro One quotation reads "will be billed on actual costs". The estimated cost of this "layout" has to be paid for by the person who will be connected and in most of cases the Sandy Lake First Nation Council ends up paying for this cost. The house must pass an electrical compliance test, ESA etc before it can be connected. Once all of that is in place it can be reconnected. But all costs have to be paid up front before Hydro One will even consider reconnection.

But the arrears stay with the meter number. It doesn't matter if you move. If power is to be restored it is under the new connection policy. An example of connections. Say we had ten houses to be connected the estimate of connection was $119,000.00. But because Hydro One remotes comes in on Monday and leaves on thursday the work takes longer and the cost of airline charters in and out is added on. Hydro One is not like other contractors who come in and stay until the job is done. The Hydro One employees belong to a union.

(See response of Joseph C. Meekis.)

5. How are repayment programs handled? Who is involved?

We don't know of any repayment programs. Just 100% to be paid.

(See response of Joseph C. Meekis.)

6. How do people repay their arrears?

(See response of Joseph C. Meekis.)

The people have to pay the full amount of arrears by borrowing from friends, relatives and or request to the Sandy Lake First Nation for assistance or face disconnections during Hydro One collection trips. I want to provide one example. there is a number on the meter. Let's say Joe lives there and he leaves without paying his bill, then I move in. I can't get electricity until I pay Joes bill. I will never get service from Hydro One unless I pay for Joes account.
If I don't pay I can't get recognition or service until Joe pays for that account.

(See response of Joseph C. Meekis.)

7. Does the band pay or make loans to pay for electrical energy arrears?

No, the band does not pay or give loans. But if there is an empty house, before we can use it or give it to someone else, the Sandy Lake First Nation has to pay the energy arrears.

8. Is there another source of payment for arrears that you are aware of?
(See response of Joseph C. Meekis.)

9. Do you agree with the HORCI application for exemption?

(See response of Joseph C. Meekis.)
We want to state that we have not been consulted about this application for exemption. (Harry Meekis)

10. Do you agree with the HORCI regulations regarding disconnections, reconnections, arrears and repayment requirements?

I do not agree with regulations regarding disconnection, reconnection and arrears, as to my knowledge there are no repayment practices that I am aware of. I have three people ready to be reconnected. They have done all the required steps to be reconnected but reconnection costs $5000.00 per house and must be paid up front, the affected people do not have the ability or the resources to pay. Another process, when the account is more than six months over they (HORCI) will do what is called a layout, they cost out the reconnection, including the layout and engineering. They have to paid before they come up with a cost estimate for the reconnect. That has to be paid up front.

11. Do you have any questions, direction or advice?

As we have never seen the repayment guidelines from Hydro One and if there is one, copies should be provided to Sandy Lake First Nation. It should be public knowledge.

(See response of Joseph C. Meekis.)

We want to comment, we were looking at connecting up ten houses. We jumped through all the hoops, layout costs, engineering, inspections everything. They gave us a cost estimate of $119,000.00 to connect 10 homes. But we had no control over how many times they came and went. Multiple times at $5000.00 or more per airline charter. They would come in on Monday and leave Thursday. They are not like other contractors. The estimate was $119,000.00 and that estimate can increase significantly.

Witness statement of:

Harry Meekis as indicated: _____ Date June 30/11

Witness _____ Date June 30/11

P.O. Box 12
Sandy Lake, ON
P0V 1V0

Sandy Lake First Nation

Fax

Telephone: (807) 774 – 3421 / 5121 Facsimile: (807) 774 – 1040

To: Douglas Cumming Law Firm:

From: Dept/Title:

Fax: 1- 416-903-9111 Pages: 05 (including cover page)

Phone: 1- 807-737-1211 Date: June 30/11

Re: Speed #: (if applicable)

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• Comments: _____

Witness Statement Regarding Hydro One Remotes Application for Exemption from the distribution System Code amendments and from the Distribution System Code.

Sandy Lake Witness statements of Joseph C. Meekis, Executive Director, Sandy Lake First Nation April 20, 2011

1. Were you aware of the application for exemption? Did you receive any information regarding the application?

   No. Not until we read the material you sent to us. (Joseph C. Meekis)

2. Did HORCI discuss this application with you?

   No. We had no idea. (Joseph C. Meekis)

3. Did you agree to the content of the application?

   No. There was no discussion and no agreement. (Joseph C. Meekis)

4. How are disconnects handled in your community?

   (See Harry Meekis response)

   100 % of the bill must be paid before reconnection. (Joe C. Meekis)

   Sometimes we have to sit down with the people and try to explain how HORCI is dealing with the reconnection issues. (Joseph C. Meekis)

5. How are repayment programs handled? Who is involved?

   (See Harry Meekis response)

I read this material to the Chief and he says he is not aware of any repayment program with Hydro One Remotes. (Joseph C. Meekis)

6. How do people repay their arrears?

Sometimes there is no other choice but for the Chief and Council to pay for reconnection, for example if someone has come back from hospital and required specialized treatment from out of the community. We can't have them without electricity if they are elderly or with chronic ailments. (Joe C. Meekis)

(See Harry Meekis response)

Sometimes we have had to write them (HORCI) a letter when someone has passed away(died) and have left an oustanding bill. The Chief has had to write and tell them the person has passed on. (Joseph C. Meekis)

7. Does the band pay or make loans to pay for electrical energy arrears?

(See Harry Meekis response)

8. Is there another source of payment for arrears that you are aware of?

Sources are limited , in a remote community and ecomomy.

9. Do you agree with the HORCI application for exemption?

I didn't know anything about it but I would have to look and try and understand it to make a determination one way or the other. (Joseph C. Meekis)

(See Harry Meekis response)

10. Do you agree with the HORCI regulations regarding disconnections, reconnections, arrears and repayment requirements?
(See Harry Meekis response)

11. Do you have any questions direction or advice?

(See Harry Meekis response)

We did have a conservation program here. Hot water tank blankets to be installed. There was training provided. The project cost $21, 000.00. Our people put energy blankets around the hot water tanks. (Joseph C. Meekis)

(See Harry Meekis response).

Witness statement of:

Joe C. Meekis as indicated: _____ Date June 30 2011

Witness _____ Date June 30 2011