



ONTARIO ENERGY BOARD

FILE NO.: EB-2011-0118

VOLUME: 2

DATE: August 12, 2011

BEFORE:	Cynthia Chaplin	Presiding Member
	Marika Hare	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 pursuant
to section 74 of the *Ontario Energy Board Act*,
1998 by Hydro One Networks Inc. seeking an
exemption to sections of the Distribution
System Code relating to the connection of
micro-embedded generators to its distribution
system.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Friday, August 12, 2011,
commencing at 9:35 a.m.

VOLUME 2

BEFORE:

CYNTHIA CHAPLIN

Presiding Member

MARIKA HARE

Member

A P P E A R A N C E S

KRISTI SEBALJ	Board Counsel
VINCE COONEY	Board Staff
MICHAEL ENGELBERG	Hydro One Networks Inc.
JONATHAN MYERS	Canadian Solar Industries Association (CanSIA)
ROGER QUENNEVILLE	Independent Participant
CHERIE BRANT JOANNA VINCE MARION FRASER	Ontario Sustainable Energy Association
RICHARD STEPHENSON	Power Workers' Union
MICHAEL CARTEN	Sustainable Energy Technologies

ALSO PRESENT:

WESLEY JOHNSTON MILFRED HAMMERBACHER STEPHEN RAY ETHAN DESOTA	Canadian Solar Industries Association (CanSIA)
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NO UNDERTAKINGS WERE FILED DURING THIS PROCEEDING

1 Friday, August 12, 2011

2 --- On commencing on at 9:35 a.m.

3 MS. CHAPLIN: Please be seated. Do we have any
4 preliminary matters?

5 **PRELIMINARY MATTERS:**

6 MR. ENGELBERG: Good morning, Madam Chair. Yes, I do.

7 I wanted to point that this morning Hydro One was able
8 to fulfil most of the undertakings and hopes to have the
9 others later on. I think five of them were fulfilled this
10 morning, leaving only three left to be done.

11 And I would like, in particular, to point out Hydro
12 One's response to undertaking J1.5.

13 MS. CHAPLIN: We have that here.

14 MR. ENGELBERG: Thank you. That was an undertaking to
15 provide dates that each of the following mitigation
16 measures were implemented.

17 Item number 2 under there is customer communication,
18 so what I would like to point out is that Hydro One also
19 took the opportunity to provide a copy of a sample of some
20 of the communications that were sent out. It appears on
21 the back of that first page, and it's entitled "Important
22 Information".

23 And in that short letter, it mentions that the number
24 of project applications received by the OPA has far
25 surpassed applications. It mentions that Hydro One regrets
26 that it is taking longer than expected to process them and
27 that no answer can be given at the particular time the
28 letter was sent out.

1 And, finally, it contained again a reminder that
2 applicants should not be purchasing equipment until they
3 receive and accept an offer to connect.

4 The remainder of the pages simply respond to the other
5 matters given in the undertaking, and all the other
6 undertakings that were filed this morning are self-
7 explanatory.

8 MS. CHAPLIN: Okay, thank you.

9 MR. ENGELBERG: Thank you.

10 MS. CHAPLIN: So which intervenor panel are we going
11 to hear from first?

12 MS. SEBALJ: I believe it's the CanSIA.

13 MS. CHAPLIN: Mr. Myers.

14 MR. MYERS: Yes, thank you.

15 MS. CHAPLIN: If your witnesses would like to come
16 forward and be sworn or affirmed?

17 **CANADIAN SOLAR INDUSTRIES ASSOCIATION - PANEL 1**

18 **Ethan DeSota, Sworn**

19 **Milfred Hammerbacher, Sworn**

20 **Wesley Johnston, Sworn**

21 **Stephen Ray, Sworn**

22 MS. CHAPLIN: Go ahead, Mr. Myers.

23 **EXAMINATION-IN-CHIEF BY MR. MYERS:**

24 MR. MYERS: Thank you. Good morning.

25 Mr. Johnston, can you please tell us your name,
26 employer and your position?

27 MR. JOHNSTON: My name Wesley Johnston. I'm director
28 of policy and research with the Canadian Solar Industries

1 Association.

2 MR. MYERS: And as I understand, CanSIA is a national
3 trade association that represents approximately 700 solar
4 energy companies across Canada?

5 MR. JOHNSTON: Yes.

6 MR. MYERS: And roughly what portion of those member
7 companies are active in Ontario?

8 MR. JOHNSTON: Roughly 60 percent would be active in
9 Ontario.

10 MR. MYERS: And as the director of policy and research
11 for CanSIA, what are your responsibilities?

12 MR. JOHNSTON: Some of my responsibilities include
13 matters are related to federal and provincial solar energy
14 policy, management of policy staff, management of various
15 caucuses and working groups, and also management of matters
16 related to utility connection consultations, codes and
17 standards, submissions of regulatory and policy positions,
18 and representing CanSIA internationally.

19 MR. MYERS: And how long have you been with CanSIA?

20 MR. JOHNSTON: For about four-and-a-half years.

21 MR. MYERS: As part of your responsibilities with
22 CanSIA, are you in close and frequent contact with member
23 companies?

24 MR. JOHNSTON: Yes, I am.

25 MR. MYERS: So you have a good sense of the issues
26 they are facing and their concerns?

27 MR. JOHNSTON: Yes, I do.

28 MR. MYERS: And did you participate in the preparation

1 of your affidavit?

2 MR. JOHNSTON: Yes, I did.

3 MR. MYERS: Do you adopt that affidavit as your
4 evidence in this proceeding?

5 MR. JOHNSTON: Yes, I do.

6 MR. MYERS: Thank you. Mr. Hammerbacher, can you
7 please state your name, company and position with that
8 company?

9 MR. HAMMERBACHER: I am Milfred Hammerbacher with
10 Canadian Solar Solutions, and I'm the president of the
11 company.

12 MR. MYERS: And as I understand it, Canadian Solar
13 Solutions is a member of CanSIA through its parent company,
14 Canadian Solar Inc.?

15 MR. HAMMERBACHER: Yes, it is.

16 MR. MYERS: Can you briefly describe for us the nature
17 of the business operated by Canadian Solar Solutions?

18 MR. HAMMERBACHER: So Canadian Solar Solutions has a
19 manufacturing facility in Guelph. We also have a sales and
20 project development group that is active in Ontario.

21 MR. MYERS: And what is it that you manufacture at the
22 facility in Guelph?

23 MR. HAMMERBACHER: We manufacture solar panels. It's
24 a state-of-the-art facility, about 200 megawatts per year
25 production.

26 MR. MYERS: What is the nature of the business
27 operated by its parent company, Canadian Solar Inc.?

28 MR. HAMMERBACHER: So Canadian Solar Inc. is a global

1 company, a Canadian company, publically traded on NASDAQ,
2 and our major focus is manufacturer of solar panels. Last
3 year we were sixth in the world in terms of volume, and we
4 have about 10,000 employees worldwide.

5 MR. MYERS: And as president of Canadian Solar
6 Solutions, what are your responsibilities?

7 MR. HAMMERBACHER: So I am responsible for all the
8 activities and operations in Canada, which include
9 manufacturing, sales and project development.

10 MR. MYERS: And how long have you been with the
11 company?

12 MR. HAMMERBACHER: Since 2009.

13 MR. MYERS: And prior to your current role, you served
14 as executive consultant to the parent company, Canadian
15 Solar?

16 MR. HAMMERBACHER: That's correct.

17 MR. MYERS: And did you participate in the preparation
18 of your affidavit?

19 MR. HAMMERBACHER: Yes, I did.

20 MR. MYERS: And do you adopt that affidavit as your
21 evidence in this proceeding?

22 MR. HAMMERBACHER: Yes, I do.

23 MR. MYERS: Thank you. Mr. DeSota, can you please
24 tell us your name, company and your position with the
25 company?

26 MR. DESOTA: Ethan DeSota. I'm with EthoSolar, and
27 I'm the marketing manager for EthoSolar.

28 MR. MYERS: EthoSolar is a member of CanSIA?

1 MR. DESOTA: They are.

2 MR. MYERS: And, briefly, what is the nature of the
3 business operated by EthoSolar?

4 MR. DESOTA: EthoSolar operates a business that
5 designs, puts together OEM packages and sells and installs
6 solar across Ontario from Windsor to Ottawa.

7 MR. MYERS: And as the marketing manager for
8 EthoSolar, what are your responsibilities?

9 MR. DESOTA: My primary responsibilities are to
10 increase our market presence here in Ontario, to oversee
11 our advertising and other efforts like that.

12 I also have had a pretty significant hand in project
13 management on over 300 projects, including training of
14 contractors.

15 MR. MYERS: And how long have you been with EthoSolar?

16 MR. DESOTA: About a year and a half.

17 MR. MYERS: And did you participate in the preparation
18 of your affidavit?

19 MR. DESOTA: I did.

20 MR. MYERS: Do you adopt that affidavit as your
21 evidence in this proceeding?

22 MR. DESOTA: I do.

23 MR. MYERS: Thank you. Mr. Ray, can you state your
24 name, company and position with the company?

25 MR. RAY: My name is Stephen Ray with Essex Energy
26 Corporation. I'm the business development manager.

27 MR. MYERS: And is Essex Energy a member of CanSIA?

28 MR. RAY: Yes, it is.

1 MR. MYERS: It's my understanding that the parent
2 company of Essex Energy, which is called Essex Power
3 Corporation, is a holding company that was formed some
4 years ago by four public utility commissions; is that
5 correct?

6 MR. RAY: That's correct.

7 MR. MYERS: And that holding company, in addition to
8 owning Essex Energy, also owns Essex Powerlines, which is a
9 regulated local distribution company?

10 MR. RAY: That is correct.

11 MR. MYERS: Is your role strictly with Essex Energy
12 and not with the regulated entity?

13 MR. RAY: That's also correct.

14 MR. MYERS: Can you please describe the nature of the
15 business that is operated by Essex Energy?

16 MR. RAY: Essex Energy has a range of -- basically
17 offers a range of energy management services ranging from
18 software development, renewable energy, which is where my
19 focus is, distributed generation, and conservation and
20 demand management services.

21 MR. MYERS: So as the business development manager for
22 Essex Energy, what are your responsibilities?

23 MR. RAY: My primary responsibilities, I basically run
24 the renewable energy division for the company, which
25 involves development, construction, consulting related to
26 renewable energy, with a specific focus mainly on solar PV.

27 MR. MYERS: And how long have you been with the
28 company?

1 MR. RAY: A little better than two-and-a-half years.

2 MR. PYE: Are you a licensed member of the
3 Professional Engineers of Ontario?

4 MR. RAY: Yes, I am.

5 MR. MYERS: Did you participate in the preparation of
6 your affidavit?

7 MR. RAY: Yes.

8 MR. MYERS: Do you adopt that affidavit as your
9 evidence in this proceeding?

10 MR. RAY: Yes, I do.

11 MR. MYERS: Thank you.

12 I just have a few questions on two discrete areas that
13 we thought would be of assistance to the Board.

14 The first area has to do with the timelines and
15 sequences of events associated with microFIT projects, as
16 though timelines and sequences unfold from the perspective
17 of these companies.

18 Mr. DeSota, as an installer, can you please describe
19 the typical sequence of events that would take place from
20 the point in time where a customer calls you up because
21 they want to place an order with your company for a
22 microFIT project? And I am wondering if you can first
23 describe what that process was as your company had
24 envisioned it, based on the time frames in the code.

25 MR. DeSOTA: Absolutely.

26 Well, it's been an evolving process.

27 Where we started in the beginning was client would
28 call in, say they were interested in a microFIT project.

1 We would ask them if they had submitted for an OPA
2 contract, and if they had, of course we considered that it
3 was a -- they were fairly serious and probably wanted to go
4 ahead.

5 We would take an initial deposit, usually of \$1,000,
6 and that would put them into our ordering queue. Most of
7 our manufacturers -- one of our manufacturers we deal with
8 is from Germany, and then the rest from here in Ontario,
9 and so as a result we needed to have forecasts out up to
10 six months ahead for us to get our product here.

11 So we would take that thousand dollars, we would enter
12 them into the system, we was put them in the queue, we
13 would instruct them to apply for their form C and get an
14 offer to connect, and then we would install the system.

15 So initially, then, of course, we would go give our
16 forecasts. The way it's working in Ontario, because the
17 demand is so high, many manufacturing companies have told
18 us you are going to have to pay a percentage upfront and
19 you will have to pay completely on delivery. So in other
20 words, we pay for almost all our supplies; we don't have 30
21 days, we don't have 60 days, we don't have 90 day credit.
22 We pay for our supplies, cash upfront, and then we get
23 reimbursed by the customer.

24 The alternative is for us to go to back of the line,
25 and in order to install efficiently and quickly, we want to
26 be at the front of the line, and so we've operated a cash-
27 based business based on very little credit.

28 The difficulty has come in -- in our contracts it

1 states that once ESA is completed, because that's our
2 completion, then they are responsible to give us that final
3 20 to 30 percent on their project.

4 What began happening from the beginning -- and I would
5 just say that problems have existed well before this time
6 frame that we talked about in 2010 -- what began happening
7 from the beginning is when there was a delay, we would of
8 course send the bill out, but if it was not hooked up right
9 away we wouldn't get paid, because nobody wants to pay
10 until they see a meter spinning.

11 So that was a direct impact, but then we began to find
12 pretty much all our -- in late 2010, as was explained,
13 pretty much all of our acceptances, so loads of people,
14 over 500 clients, had their OPA approvals, and we had not
15 been denied one system up to that point. And we had put in
16 over 200 out through the end of 2010.

17 So then all of a sudden there was just a gap;
18 everything stopped. No acceptances coming through, nothing
19 happening, but we still had our forecasts, we still had
20 people coming into the system, saying: Hey, I have got my
21 approval. I have submitted our C form. We were still
22 committing to manufacturers.

23 And then suddenly, of course, in early 2011, nearly
24 70 percent of those that we had in our system received
25 rejection letters, after about three to four months of
26 silence.

27 This drastically affected, drastically affected, our
28 business plans. We have one manufacturer who is still

1 holding us for about 1.5 million of product that we
2 committed to, and they say: Hey, you are taking delivery
3 on it because we manufactured it. We have to the
4 manufacture it six months ahead.

5 So now what happens is we have put our manufacturers
6 on standby, that we are going to do it on a per-system
7 basis; we cannot give them forecasts. As a result, we had
8 to break a couple of contracts, so our prices have gone up
9 between 10 and 15 percent with some manufacturers, because
10 basically what we need to do now is we have to wait. We
11 are not sure of anything. We have to wait until all the
12 marbles are in the bag. We cannot forecast. Then we need
13 to call up the manufacturer and say: Oh, they got their C
14 form. By the way, we would like to install it in the next
15 month. Can you scramble and get us a package?

16 Rather than before, we were receiving we were
17 receiving 10 to 15 systems, microFIT systems, a week into
18 our warehouse. We had them on a scheduled pre-ordered
19 basis, and we knew if we had a low week where we only did
20 eight installs, we would have a high week where we did 15
21 or 20 the next week, and it was fairly predictable system.

22 So that would just be the process. Does that answer
23 your question?

24 MR. MYERS: Yes, that's very helpful. Thank you.

25 And so going back to the point in the process where
26 you would order your panels, for example, maybe we can go
27 over to Mr. Hammerbacher.

28 And as a panel manufacturer, what does that process

1 look like from your perspective? How -- what was the
2 business process in your company as originally envisioned,
3 and then how has that changed more recently?

4 MR. HAMMERBACHER: So Canadian Solar is a pretty
5 conservative company, so we spent a lot of time in planning
6 forecasting upfront, meeting with our clients, getting
7 their forecast and developing plans.

8 As Ethan had spoke earlier, our typical process early
9 in the FIT, the microFIT program was to -- once a customer
10 came to us with FIT contracts, we would then issue a work
11 order to our factories and start manufacturing the panels.

12 It was a very planned-out process, basically a just-
13 in-time kind of delivery that we developed. We find that
14 is definitely the lowest-cost way to produce panels.

15 And in renewable energy, cost is everything. We get
16 beat up a lot for allegedly being high-cost, and so we are
17 trying to reduce our costs wherever we can.

18 That was occurring until all of a sudden delays,
19 rejections starting to occur, and being a larger company,
20 we were able to let most of our clients get refunds on
21 deposits they had put down, change their forecasts, and it
22 basically turned our whole process upside down, created a
23 lot of inventory that we still are dealing with right now,
24 and inventory costs money.

25 So it's been a pretty dramatic effect that we have
26 seen this year.

27 MR. MYERS: Thank you.

28 So just moving on to the second area that I wanted to

1 cover, yesterday Board counsel referred to the fact that
2 some intervenors had indicated that they had had more
3 positive experiences with other utilities with respect to
4 customer communications.

5 Mr. Ray, I understand that you have been involved in
6 projects with a number of -- in a number of LDC service
7 territories, so perhaps you are in the best position to
8 maybe shed some light on these types of issues.

9 MR. RAY: I think the biggest difference, I guess, in
10 dealing with some of the other LDCs, as you mentioned, as
11 compared to Hydro One in communication would be, for
12 example, if there is a question about a project somewhere
13 within the application stage. For example, it's very easy
14 to call most other LDCs and get specific answers about
15 specific projects, whereas the calls to Hydro One, as has
16 been indicated, and e-mails generally result in a more
17 generic-type response that we have seen, or in that time
18 frame from September, October, right through February of
19 2011 -- sorry, September of 2010 through February of 2011,
20 there was no communication for a lot of our projects, for
21 most of it.

22 As Mr. DeSota referred to, that was kind of when
23 communication dried up. So I guess that being the biggest
24 difference, more of a project knowledge with some of the
25 other LDCs; yes, here is where it is, here is where it's
26 going to go, and more of a, I guess, generic, labelled
27 response that we received from Hydro One.

28 MR. MYERS: I understand there is a big difference in

1 the connection costs, as well, between other LDCs and Hydro
2 One in your experience?

3 MR. RAY: There is differences in costs right across
4 the province for most LDCs. Without quoting exact prices,
5 I have seen price connection costs as low as \$100 -- \$80 to
6 \$100, and as high as \$1,500 or \$1,200 range just for
7 standard plug-in-a-meter-type connections.

8 Obviously for other arrangements where transformers
9 are changed and everything, that's a whole other issue.
10 But, yes, absolutely on an apples-to-apples basis, there
11 are multiple prices out there.

12 MR. MYERS: Okay, thank you very much. I have no
13 further questions.

14 MS. CHAPLIN: Thank you, Mr. Myers.

15 MS. SEBALJ: We hadn't agreed to an order, Mr.
16 Engelberg. I don't know what your preference is.

17 MR. ENGELBERG: It would be fine for you to go first,
18 Ms. Sebalj.

19 **CROSS-EXAMINATION BY MS. SEBALJ:**

20 MS. SEBALJ: Sure. So my name is Kristi Sebalj. I
21 will just start with a couple of follow-ups from your
22 direct examination.

23 Mr. DeSota, I am not sure that I heard whether you
24 said -- do you install mostly in Hydro One territory? Can
25 you give me an idea of the makeup of your business, Hydro
26 One versus other LDCs?

27 MR. DESOTA: I would say that probably 90 percent, 90
28 to 95 percent of our installs are in Hydro One. We have

1 dealt with probably about nine other companies, LDCs, in
2 our installs.

3 MS. SEBALJ: And so this notion has arisen over the
4 last day or so of the predictions being that this would
5 largely be an urban program, and it's turned out to be
6 rural. Was your company -- what were your projections with
7 respect to the uptake of microFIT?

8 MR. DESOTA: We actually studied what happened in
9 other countries, and so we knew it was going to be rural,
10 not urban. Several things. I am a farmer, as well, and
11 farmers are early adopters. We know the process. We are
12 already trying to green our farms. Greening is a huge
13 thing that we understand. Investing in long-term
14 investments is a huge thing that we understand.

15 So before the Green Energy Act even started, I know
16 Ken and Jeremy, who lead our company, were already setting
17 up dealerships and talking about the possibility of what
18 would happen in the rural market. So we were convinced
19 rural would be the early adopters.

20 MS. SEBALJ: And so to the extent that there were
21 discussions about this, either by way of your individual
22 company or through CanSIA, was this discussed at all at --
23 I am assuming that there was a lot of planning going on
24 around microFIT, and was there a debate about uptake, or
25 was it discussed? Do you know? Were you a member of any
26 of the stakeholdering that was going on?

27 MR. DESOTA: You know what? I was not. I came in
28 probably after those initial discussions.

1 MS. SEBALJ: In your direct, you mentioned, and we
2 have heard about, this gap that occurred somewhere late
3 2010 going through to early 2011. Did you -- did your
4 company foresee that gap happening? Did anyone have any
5 notice of that?

6 MR. DESOTA: There was no notice. There were some
7 whispers that we had after things grew silent. We do have
8 some friends here and they're in different offices, and
9 there were whispers that something was going on, that there
10 were big changes that were going to occur. There was a
11 piece of software being developed, but -- and then we did
12 get the letter.

13 Some of our clients - not all of our clients, but some
14 of our clients - got a letter in December, late December, I
15 would say right around the Christmas period, saying, Hey,
16 there are delays, we will get to you.

17 But that was kind of typical of Hydro One
18 communications: Say as little as possible and be as
19 indirect as possible to allow things to keep rolling.

20 MS. SEBALJ: Now over to my actual prepared questions
21 for you. At paragraph 19 of your affidavit, you reference
22 connection delays and refusals, particularly by Hydro One.

23 Have you experienced connection delays with other
24 utilities?

25 MR. DESOTA: No, I have not. To my memory, I cannot
26 give you an example with another utility.

27 MS. SEBALJ: And what would you -- would you be able
28 to hazard a guess what the average delay was in that late

1 2010, early 2011 period for your clients? Was it -- is
2 there a meaningful average or can you give me a range?

3 MR. DESOTA: I can give you a range. I could say
4 ranging from a couple of days late to four to six months
5 late.

6 MS. SEBALJ: Okay. And are we talking about stand-
7 alone applications or parallel, or a mixture of both?

8 MR. DESOTA: Mixture of both.

9 MS. SEBALJ: So when they are four to six, if it's on
10 a 60-day, it's a bit different than if the expectation was
11 15-day?

12 MR. DESOTA: Yes.

13 MS. SEBALJ: Sorry, are we at the connection point now
14 and we have been through the entire ESA?

15 MR. DESOTA: We could be at both. Perhaps just a
16 couple of examples would suffice.

17 MS. SEBALJ: Yes, that would be helpful.

18 MR. DESOTA: Yesterday as we were talking through,
19 initially when the 3.6 percent came up, I had to control
20 myself and not laugh, because I could come up with over 30
21 examples right off the top of my brain from the 300 that I
22 knew had gone south. And they ranged from -- one
23 particular one was, you know, Hydro One.

24 So there were a range of scheduled appointments with
25 one where Hydro One and the ESA inspector had to be at the
26 site at the same time. Hydro One actually cancelled three
27 times. It took a month and a half for them to get there,
28 because for some reason they were running late from the one

1 before. So the ESA inspector was there three times before
2 Hydro One showed up.

3 So that's one example. Another example was on one
4 person's -- one person, they lost our paperwork three
5 times. It took us four months to get him through, and that
6 was just the application process. They kept on saying, We
7 don't have it. Well, we sent it in. We can't find it.

8 And so it was sent in three times over a process of
9 months. So there was -- it wasn't just yesterday. The
10 issues that were explained as possible delays are all very
11 understandable in the construction field. You know, if
12 there is a delay, we are all contractors. We are big boys.
13 We have experienced this before.

14 So if there is an understandable delay, a locate that
15 needs to be done, all of us can grow up and we can call the
16 client and say, Hey, you know there is some extra stuff.
17 We understand that.

18 Losing paperwork, not showing up for appointments, not
19 knowing -- I cannot tell you literally the scores of times
20 that I called in to Hydro One trying to pop something out
21 and got, Well, we don't have them in our system. And I
22 would call three different numbers until I would finally
23 find them in the system.

24 There was just levels of what seemed like incompetence
25 or poor organization throughout the Hydro One organization
26 that led to the delays that I would say were 90 percent of
27 the problem for our company.

28 MS. SEBALJ: And would you -- you have indicated that

1 other distributors, you didn't have similar experience with
2 other distributors. But, I mean, to be fair, I am assuming
3 that other distributors just simply do not have the volumes
4 that Hydro One is attempting to cope with at this point.

5 MR. DESOTA: That could be very correct.

6 MS. SEBALJ: In paragraph 21 of your affidavit, you
7 say:

8 "The anticipated impacts on EthoSolar if the
9 exemptions are granted will depend upon the
10 extent of the delays in processing connection
11 requests and connecting microFIT projects that
12 would result from the granting of such
13 exemptions."

14 If the Board were inclined to grant the exemption, are
15 there conditions you would propose that would help your
16 business to have the confidence or certainty that it needs?

17 MR. DESOTA: The only thing that has come to our mind
18 is third-party oversight over Hydro One. We truly believe
19 that there is a conflict of interest with Hydro One. They
20 have an interest.

21 And we struggle with certain of the things that have
22 happened, because we do feel -- like, there is one thing
23 that was said repeatedly yesterday, Look at us, see how we
24 are trying to be such good people and hook things up, and
25 we really want this to happen.

26 I would say - and I am just being honest here - to me
27 and from what we have seen, that's very disingenuous. I
28 don't think there is a will in the organization to make

1 that happen.

2 So for us, there would have to be third-party
3 oversight. There would have to be clear standards, none of
4 this talk about best efforts. There has not been best
5 efforts to this point, and we expect more of the same.

6 MS. SEBALJ: Do you have any -- I just -- sorry, I
7 have a hard time keeping everyone straight with respect to
8 where you are operating. You say that you are overseeing
9 EthoSolar's marketing presence in Ontario?

10 MR. DESOTA: Yes.

11 MS. SEBALJ: Which leads me to believe that there are
12 operations in other jurisdictions. Do you have any
13 information from other jurisdictions that would be helpful
14 to this Board about the process in other jurisdictions?

15 MR. DESOTA: No. We are exploring markets in other
16 places, but we don't really have anything in other places
17 at this point.

18 MS. SEBALJ: And as a follow-up to my last question, I
19 mean, really for the purposes of this hearing, the Board
20 can either grant the exemption or not grant the exemption,
21 or grant the exemption with conditions -- unless there is
22 something more creative that I haven't thought of -- but in
23 not granting the exemption, I don't think that -- tell me
24 if that leaves anyone in your industry any further ahead?

25 MR. DeSOTA: I think to not grant the exemption but to
26 require compliance within a six-month period, I mean,
27 basically we want to see the feet held to the fire, and we
28 want to see a sunset. We understand in the industry, if

1 others don't, that there is an election taking place, which
2 grants some uncertainty.

3 So there is just a very narrow window for us to do
4 some installs before there may be some major changes. Major
5 changes are okay. When we got into this, we got in with
6 the idea that all the incentives would go away at some
7 point, and we have installed a couple of systems without
8 incentives altogether.

9 So we think the prices are going to be right for us,
10 but we do have a number of systems that we have sold based
11 on this program, and we do have employees, people with
12 families and little kids who go to school, and probably the
13 biggest impact on us is what is going to happen with our
14 employees. We have all left significant industries and
15 significant jobs, and if, because we are poor installers or
16 because we are poor salesmen, we are going to lose our
17 jobs, that's all understandable to us. But when you are
18 jerked around like this and you are going to lose your jobs
19 because of someone else's incompetence, then that's a real
20 struggle.

21 MS. SEBALJ: Thank you, Mr. DeSota.

22 Mr. Hammerbacher, you have in your direct talked about
23 you have spent a lot of time in planning and forecasting.
24 I am wondering if you can give us any idea what those
25 forecasts look like over time. I am thinking, you know,
26 pre-launch, at launch, and then throughout 2010 and then
27 early 2011.

28 MR. HAMMERBACHER: Sure. So I don't know if it's in

1 my affidavit, but I have been in the solar industry for 23
2 years. I didn't use to have a white beard when I started
3 in solar.

4 And so when the Green Energy Act was actually
5 announced, my team was very excited. We saw this as really
6 a world-class program and felt like it would be a great
7 business opportunity, as well as a great opportunity for
8 Ontario.

9 We did a lot of research upfront. We did marketing
10 studies. We did focus groups. And there was no surprises
11 that farmers would be the first uptake on this. That was -
12 - that just came out immediately. Ethan touched on it.

13 Farmers are entrepreneurs. They are always looking
14 for a second source of income. They are environmentally
15 inclined. They are just a perfect match, plus the way the
16 original rules were set up, that was the least
17 bureaucratic. At that time it was thought there was not
18 supposed to be any capacity limits on the microFIT.

19 And so it was clear that was going to be a big market.
20 And then when we started talking with our clients, we also
21 were reaffirmed that that was a market we should be
22 focussing on to start with.

23 So we put forecasts together, and it's -- I don't want
24 to use a lot of hyperbole, but what's happened this year
25 has really been devastating to our industry and a lot of
26 our clients. I think we have missed our forecast so far
27 this year by about 79 percent in this one market segment.

28 And this is not the only market segment we are

1 participating in, but similar kinds of problems are in the
2 FIT program, as well, and so it's very difficult. We have
3 invested probably over \$70 million in our facilities here
4 in Ontario, a 200-megawatt-a-year manufacturing facility,
5 and our competitors, I think we have probably invested or
6 we probably built somewhere north of 600 megawatts, maybe
7 800 megawatts of manufacturing capacity here in Ontario,
8 and the numbers that's been installed is maybe 50 -- 30, 50
9 megawatts. It doesn't take long to produce that, given the
10 capacity that's been installed here.

11 MS. SEBALJ: Sorry, and that 600 megawatts is FIT and
12 microFIT? Or --

13 MR. HAMMERBACHER: That's factories that have been
14 installed that we know of, that publicly have been
15 announced. And I know there were a lot of companies that
16 were planning to build factories here that have stopped
17 those plans after they saw some of the delays and things
18 that have happened here.

19 MS. SEBALJ: In your affidavit at paragraph 14, you
20 talk about a particularly large potential customer, and
21 then the -- if the connection of this customer's projects
22 are materially delayed or refused connection by Hydro One,
23 I am wondering what, for your purposes or for your client's
24 purpose, a material delay means.

25 MR. HAMMERBACHER: Well, one of the things that we
26 deal with here in Ontario is it's very difficult to do
27 construction 12 months a year, and so plans are built to do
28 a lot of installations during the summer. The delays that

1 we have seen, we are well into the build season right now
2 especially on the microFIT market, so it's very possible
3 that all the uncertainty -- and I have to point out is
4 there are delays, but then there is the perception that
5 comes along with that.

6 I consider myself kind of a hands-on manager, so I
7 participate in some of our customers' events. I was at an
8 event about a month ago and was talking to a farmer. We
9 were grand opening of a site, and the farmer said: Yeah, I
10 was going to do this, but I heard all these delays and the
11 problems with Hydro One. And the story -- I forget the
12 gentleman and his wife's name that was here yesterday --
13 that's -- everybody in the farming community knows those
14 stories. And he said: You know what? I don't trust the
15 government. I just can't make that investment.

16 Well, that's a huge impact to our business, is people
17 that were planning, that wanted to do that, and now they
18 are not going to do that.

19 So it's a challenging situation.

20 MS. SEBALJ: And so does it matter what happens in
21 this hearing with respect to your business?

22 MR. HAMMERBACHER: Yes, it does. I think -- you know
23 what? There are a lot of good people in Hydro One. We
24 have had a lot of good interfaces with individuals.

25 I think it really is important that they are sent back
26 to the drawing board to actually come up with a plan. I
27 was pretty amazed that there wasn't any statistics
28 presented yesterday in terms of what are the causes for the

1 delays. In my business, we would have a Pareto analysis,
2 saying this was 10 percent of the cause, this was
3 20 percent, and then we would have actions on the highest
4 causes.

5 And none of that was presented. I don't know if it
6 doesn't exist or it wasn't presented, but to me, I think
7 asking for a very good plan and detail before giving them
8 any delays in the conformance is important. It sends a
9 signal that everybody needs to do their best to make this
10 thing work.

11 MS. SEBALJ: Thank you.

12 Mr. Johnston, at paragraph 8 of your affidavit, you
13 say that:

14 "If the exemptions are granted, there will be
15 significant concern in the industry that other
16 utilities, which often look to Hydro One for
17 leadership, may start to seek similar
18 exemptions."

19 Do you know of other utilities that are having similar
20 issues with the Distribution System Code provisions?

21 MR. JOHNSTON: I don't know offhand. Some of our
22 other panellists may have that information.

23 I know with some conversations that I have had with
24 members, that has been brought up, whereby Hydro One is
25 definitely seen as a leader in Ontario, and if they do take
26 this stance, then other utilities may see this is an
27 opportunity to take the same stance, as well.

28 MS. SEBALJ: Is there anyone else on the panel that

1 can give us insight as to whether any other utilities are
2 having similar issues, from your perspective, of course?

3 I am sure the utility might have the different
4 perspective.

5 MR. RAY: I am probably the closest to the utilities,
6 but our sister company, I know, Essex Power Lines, I can
7 speak for that one utility, having contact with, obviously,
8 those folks. And they don't have problems turning around
9 the applications in time.

10 MS. SEBALJ: And do you have an assessment of why that
11 is? I know I put to Mr. DeSota that surely the sheer
12 volume issue is one problem, and I think we heard yesterday
13 Hydro One is a fairly spread-out distribution territory.

14 MR. RAY: Yes.

15 MS. SEBALJ: So there are issues about site
16 assessments and things like that, but what is your
17 assessment of --

18 MR. RAY: I think volume is definitely a factor. Our
19 distribution territory is also quite spread out. It is
20 four separate municipalities that can be an hour, hour-and-
21 a-half drive from one side to the other.

22 So I don't think that's a major factor. I think in
23 talking to -- before I came here, to some of the folks that
24 deal with the microFIT from our LDC sister company, they
25 have got a work request-type program database that they
26 flow those connections through, the same way they flow load
27 connections and other work through, and they prioritize.
28 And they basically -- they see the targets and they make

1 the targets.

2 MR. HAMMERBACHER: I can probably add a little bit to
3 your question there. We hired early on in the process the
4 retired CEO of Milton Hydro, and the specific reason for
5 that is we saw how important the LDCs were going to be in
6 implementing this program. And basically his number one
7 job was to find the friends and foes.

8 So there are certainly LDCs in the province that are
9 not, I would say, proactive in implementing the Green
10 Energy Act, but there are some that are. Really, what we
11 find, it's really an attitude. Some of the LDCs, like
12 Essex, saw the opportunity for their community and have
13 developed plans how to not only help people install, but to
14 actually build a business.

15 So there are several LDCs across the province that are
16 doing that. They are not having any connection problems
17 within what's in their control. They are having problems
18 with Hydro One saying transformers are not at capacity,
19 but...

20 So we see definitely there are some that I would say
21 are experiencing similar delays, but there are many that
22 are doing a good job.

23 MS. SEBALJ: Thanks. Back to you, Mr. Johnston. At
24 paragraph 9 of your affidavit, you talk about confusion
25 relating to granting Hydro One an exemption and the market
26 interpreting it as a blanket exemption.

27 If the Board were inclined to grant the exemption
28 sought, do you have any proposal for how that confusion

1 could be managed, or the potential confusion?

2 MR. JOHNSTON: Or the potential confusion. Obviously
3 communication is very, very important, and so whoever would
4 take that on, I think it could be a combination of the
5 program administrators with Hydro One, and CanSIA is always
6 very willing to communicate those messages out to our
7 membership, as well.

8 So if there are going to be different rules for
9 different utilities in different jurisdictions, I think
10 that has to be very, very clear to the marketplace and to
11 consumers, as well, to ensure that they realize that there
12 are different timelines that are in place here.

13 MS. SEBALJ: And do you see that as the role of your
14 industry, of the Board, of Hydro One, of the OPA? How does
15 that work? Because, I mean, at the end of the day, the
16 Board is dealing with one stand-alone application.

17 I think it would be a bit odd for us to be sending
18 letters to --

19 MR. JOHNSTON: Not yourself. I guess -- I don't know
20 if I said OEB.

21 MS. SEBALJ: No, you didn't. I am just wondering --

22 MR. JOHNSTON: I guess in terms of the program
23 administrators, I would say the OPA would have a role
24 possibly to play there, as well. Hydro One obviously I
25 think would have a role to play there. And CanSIA has a
26 role to play there, as well, in terms of facilitating and
27 disseminating that information, as well.

28 So I think it would take a combined effort in order to

1 ensure there is clarity on that matter.

2 MS. SEBALJ: The questionnaire provided with your
3 affidavit provided some information about impacts or
4 potential impacts to businesses in three categories. The
5 first is impacts from Hydro One delays to date. The second
6 is anticipated impacts of continued delays over the next
7 three to four months. The third is anticipated impacts of
8 continued delays over the next five months to one year.

9 And as you know, the proposed -- or the applied-for
10 exemption here is for six months from the date of decision.
11 Does your organization have a proposed solution that would
12 permit Hydro One to meet the timelines in the absence of an
13 exemption from the Board?

14 I guess I am struggling with the evidence we heard
15 yesterday that at least in certain categories of
16 applications, it's very difficult for Hydro One to meet
17 these timelines. And while I hear Mr. DeSota saying you
18 need to hold their feet to the fire, I am just wondering if
19 anyone -- if you guys have brainstormed something, because
20 holding their feet to the fire on a 15-day where a site
21 assessment is required and the thing may unravel may not be
22 the most productive way of managing this from Board Staff's
23 perspective.

24 So I am just looking to the people in the field for
25 some ideas.

26 MR. MYERS: If I can just say something? In our
27 submissions that hopefully we will hear later today, we
28 have some proposals in there. I think that Mr. Johnston

1 could offer a bit of a summary, perhaps, but we will have
2 more detail.

3 MS. SEBALJ: I am not looking for a preview of your
4 argument. I was just wondering if the people on the ground
5 were at all sympathetic with the idea that when a parallel
6 connection requires a site assessment, 15 days is tough to
7 meet, or whether from your perspective that is absolute
8 hogwash.

9 MR. JOHNSTON: Well, some of the things obviously we
10 are going to mention in our closing statements, as well,
11 and that had been mentioned over the last two days here in
12 terms of making sure that there is a plan in place to
13 essentially bring Hydro One to compliance, proper
14 monitoring, getting stats in terms of determining what the
15 real issue is, as well.

16 Those are all very, very important steps, and if there
17 are additional complications with the process, I think
18 there has to be an analysis done there, as well, to really
19 determine what that is. And we as an industry have some
20 concerns in terms of the screening tool itself, as well,
21 and some of the implications of that screening tool.

22 And so we had been in very good communication with
23 Hydro One in terms of trying to explore the issue, trying
24 to educate not only them, but also the industry, in terms
25 of the issues that both sides are sharing there, as well.

26 So we feel that that can be an avenue. We have some
27 suggestions, maybe trying to increase the activity there,
28 increase the stakeholder involvement there, as well, in

1 terms of trying to come up with a solution more quickly,
2 which may help to alleviate some of the process issues
3 here, as well.

4 MR. DESOTA: Just something that would relate to that,
5 I would think from our experience that though Hydro One is
6 dealing with a greater volume, they also have a lot more
7 employees and a lot more resource.

8 So I am not sure there is a difference in volume,
9 aside from the urban areas. In the rural areas, I wouldn't
10 say there is a difference in volume per capita. So I
11 still -- it still begs the question: Why do other LDCs get
12 out and meet their timelines?

13 I have been there for site evaluations with Hydro One.
14 They are there for 10 minutes, maybe. It's an in, it's an
15 out, it's a back to the office.

16 I have also been involved in situations where
17 something has been held up for three or four months, and we
18 have gotten the president of our company involved and
19 called all the way up the line, and, you know, did a little
20 fussing. And we have had the site evaluation and the
21 approval back in less than 24 hours.

22 So the question that I do have is 15 days is -- that's
23 some time. That doesn't seem unreasonable. There is 400
24 substations in Ontario that Hydro One has, from what my
25 research indicates to me. That's, you know, one evaluation
26 per substation per week.

27 If you look at 400 applications coming in in a week,
28 if you look at the spread of employees, is it really that

1 huge? Why do other companies with the same per capita
2 rate -- why are they able to do that?

3 We guarantee our customers a full site evaluation,
4 which takes an hour and a half. We have very few
5 employees. Within a week after, they have a contract with
6 us, and we are very faithful to make that happen.

7 So I guess I still have some concerns as to why that
8 can't be done in a two-week period.

9 MS. SEBALJ: I knew I had questions for Mr. Ray. I
10 just had to find them.

11 In your direct, Mr. Ray, you spoke about connection
12 costs. And without going into whether it truly is an
13 apples-to-apples comparison, because I don't think that I
14 can fairly conclude that it is until I hear both sides of
15 the story, do you have any idea where the difference in
16 costs comes from?

17 I mean, there are materials and there is time. I am
18 not sure --

19 MR. RAY: The trucks, the time, the material, the
20 deployment is generally, as I understand it, how the LDC
21 would roll up that cost, and obviously there must be some -
22 - there is burdens involved, so the way different companies
23 burden their trucks and employees and how long it takes, I
24 think the combination of all that, it must have went into.
25 I guess I couldn't go -- I don't know exactly how they come
26 up with their numbers, but those are some of the inputs to
27 the numbers. I do know that. And why some others end up
28 at 1,200 and others end up at 100, obviously the varying

1 degrees of those inputs into those numbers, I would think.

2 MS. SEBALJ: With respect to communications, I think I
3 understood your direct evidence to be that basically you
4 can get an answer to a specific question from other LDCs,
5 whereas at Hydro One you get a generic answer. And I
6 understand that a lot of communication from Hydro One comes
7 through e-mail. I am not sure if a lot of other LDCs
8 operate the same way.

9 Do you have any tangible suggestions for how Hydro One
10 can manage their communications with customers in a better
11 way?

12 MR. RAY: I guess the problem is that from time to
13 time, you call about a project, as was mentioned by Mr.
14 DeSota. We have also experienced. It's not on file.

15 I don't know if there is a central database or how all
16 those microFIT projects are managed, but to me it could be
17 as simple as it's all on one database when a customer calls
18 with either a name or an address or a FIT, microFIT
19 contract number.

20 I would envision being able to pull that up onto a
21 database and seeing a status screen of exactly where
22 everything is. And that does happen sometimes; we do get -
23 - we do call, depending on whether it's the BCC or one of
24 the field operations centres. You know, it's not every
25 time where we don't get any information, but quite often
26 you will either you have -- either -- you have called the
27 BCC and you needed to call the field office. There is a
28 number of options of phone numbers to call; that's one, but

1 as long as you understand which one to call, sometimes you
2 won't get direct answers, or you will find out that the
3 meter was already installed, which is a good problem, but
4 that's the other end of the communication.

5 So to me, I -- suggestion-wise, I would think that
6 there should be one central database that's kept up to date
7 all the time, where you call a specific number -- whether
8 it be the BCC or wherever -- and you can get information
9 readily on that project.

10 MS. SEBALJ: That's what I was going to ask you next,
11 is when you -- I have no idea how this works on the ground.

12 So if I am a microFIT customer and I have my -- I have
13 applied to the OPA and now I am applying to Hydro One or
14 the reverse, since the rule has changed, but I am applying
15 to Hydro One, do I get a list of numbers to contact, or do
16 I get one contact individual, or is it the BCC that I am
17 supposed to contact, or is that --

18 MR. RAY: Typically you would fill out your form C.
19 And the way we do it is we simply e-mail it to the BCC, I
20 believe, or the DX generation crew is the standard e-mail
21 address.

22 I believe it starts there. So the 6.2.6-type stuff is
23 usually BCC calls, and once it gets to the field level or
24 the 6.2.7, that's when you are trying to find where you
25 need to call in the field.

26 Sometimes you can get redirect, and if you call the
27 wrong number, they will say: Okay. Call over here.

28 MS. SEBALJ: Is that one number that you are given at

1 the beginning and you just sort of figure it out as you go
2 along? Or is it when you are in this process, this is who
3 you contact, and when you get to the point where you have
4 provided everything and you are at then connection piece,
5 this is the number to call?

6 MR. RAY: I don't know the answer. I can tell you we
7 what we have done. We now know numbers to most of the
8 field offices and contacts, having been going through it
9 for a year and a half. So we tend to try to call the folks
10 we know the best to try to get answers.

11 And in the absence of that, we will do the cold call
12 to the BCC, usually, and you can find out where to call
13 from there afterwards.

14 So that's generally how we do it. If there is a
15 prescribed way we should be doing it, we are not aware.

16 MS. SEBALJ: No, I am not suggesting it's prescribed.
17 I am just wondering if there is a better way.

18 I am thinking that if I am an individual -- I mean,
19 you are all quite seasoned, and even Mr. Quenneville at
20 this point is quite seasoned -- but if I'm an individual
21 who's putting a single installation, you know, that might
22 be a frustrating thing more me not to know who to call at
23 any given time.

24 Paragraph 11 of your affidavit indicates that:

25 "Micro-embedded generation requests, particularly
26 those to Hydro One, have been processed more
27 slowly than anticipated."

28 And I guess this is a similar question to Mr. DeSota;

1 what does "more slowly" mean?

2 MR. RAY: More slowly means --

3 MS. SEBALJ: Is there a range?

4 MR. RAY: Yes, we are in full knowledge of the
5 Distribution System Code, being who we are, so we expected
6 there to be -- those guidelines not necessarily to be met
7 early on in the process, but we were expecting a few bumps
8 and bruises as the process flowed out, but that did not
9 happen.

10 So again, talking about ranges, we have seen some that
11 have come in on time, others that have been five to 10 days
12 late, and others where paperwork has been lost on the RCC
13 stage or the 6.2.7 stage, where, you know, we have waited
14 months.

15 So it's very -- I guess it's -- for lack of a better
16 description, it's kind of random, where once it's late, it
17 could be random as to how late it can go. It depends on
18 the nature of the problem. Sometimes we don't know what
19 the problem is.

20 I don't know if that answers your question, but...

21 MS. SEBALJ: No, that does.

22 MS. CHAPLIN: Mr. Ray, would you say -- I am just
23 trying to see if I can kind of get some of the gist of the
24 concerns.

25 I mean, delays are a concern, but is it primarily the
26 uncertainty? In other words, if you knew that, no, you are
27 not going to get your answer in 15 days, you are going to
28 get it in 30 days, is that...

1 MR. RAY: I think if 15 days became maybe 20, 30 is
2 getting kind of long, because as Mr. Hammerbacher stated,
3 there is a preferred building season and it is shorter than
4 some jurisdictions. So you like to try to plan and shorten
5 the timelines as much as possible.

6 But yes, I think the delays combined with the
7 communication combined with the screening tool and the
8 specifically the 7 percent rule, I think those big three,
9 you put them together and it causes the biggest
10 uncertainty. So I think the delays is one component of it,
11 a significant component, and if those delays had to be --
12 as long as there is a prescribed timeline and everybody
13 knows, and like I say, 15 days became 20 days, you know,
14 for parallel connections that required a site visit, for
15 example, certain conditions on certain types of projects,
16 then I think it would be palatable. I can't speak for the
17 industry, but it would be palatable.

18 But like I say, when you combine not knowing what the
19 status is -- especially at the end of 2010 there -- with
20 the delays, and then of course the new screening tool now,
21 that you don't know if it's every going to get -- you don't
22 know, after waiting the 15 or 30 days, you don't even know
23 if it's going to come through, you combine those and it
24 really hurts the perception of the market and it hurts the
25 market.

26 MR. JOHNSTON: Can I just add to that a little bit?

27 I would agree with Steve where in terms of actual days
28 that might be getting long.

1 And to your point on certainty, right now -- or
2 before, I should say, there was an expectation within the
3 marketplace that things would be done within a certain time
4 frame, and so when those expectations weren't met, that
5 essentially starting leading customers -- not only the end
6 customers but also people in the industry starting losing
7 confidence, and that's where the frustration really began.

8 So I definitely would agree with you where if there is
9 greater certainty, that helps the industry a great deal in
10 terms of trying to follow through on the supply chain and
11 things of that nature, as well. I think it's an important
12 component.

13 MS. CHAPLIN: Would that be combined -- I am getting
14 the sense also that would be combined -- for example, for
15 projects which are not -- which don't meet the deadline.
16 Let's say they don't meet the 15 days. It's also then not
17 knowing if that delay is going to be five days or another
18 30 days?

19 MR. JOHNSTON: Exactly.

20 MS. CHAPLIN: So again, is it a matter of if you were
21 able to get a forthright or a clear indication from Hydro
22 One as to what a reasonable expectation when an answer
23 would be coming?

24 MR. JOHNSTON: I think that helps, because it goes
25 back to the supply chain; it goes back to people's business
26 models.

27 And so they operate within these timelines, and so a
28 greater degree of certainty would help the industry

1 essentially make plans going forward, yes.

2 MS. CHAPLIN: Thank you.

3 MS. SEBALJ: I just had one more question for Mr. Ray,
4 and it has to do with your reference in your affidavit to
5 more refusals being received from Hydro One than from other
6 utilities.

7 In your opinion, does this have anything to do with
8 the timelines that they are seeking an exemption from in
9 this proceeding?

10 I am just getting the sense that there is frustration
11 about refusals and there is frustration about timelines,
12 and I just want to know if the two are related, from your
13 perspective.

14 MR. RAY: I think they are related in that the biggest
15 stage of delays at the end of last year, early this year,
16 those delays and -- mixed with the non-communication that
17 was happening led to a lot of folks building systems, not
18 expecting connection to be a barrier.

19 So delays can ultimately lead to bad decision-making,
20 if there is no communication or a misled decision-making, I
21 will say. So I definitely think they are related.

22 MS. SEBALJ: Mr. DeSota, you look like you might have
23 something to say about that. No?

24 MR. DESOTA: No, I will wait.

25 MS. SEBALJ: Okay. Thank you very much, gentlemen.
26 Those are all Board Staff's questions.

27 MS. CHAPLIN: Thank you.

28 Mr. Engelberg.

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

2 MR. ENGELBERG: Thank you, Madam Chair. I have only a
3 few questions.

4 Mr. Johnston, I would like to begin with you. A
5 number of things have been said about the meaning or the
6 message that would be sent by the exemption that Hydro One
7 is asking for, if Hydro One were to get it.

8 So I guess what I want to ask you first is: Would you
9 agree with me that Hydro One is not here to ask for any
10 kind of a six-month holiday from processing or dealing with
11 applications?

12 MR. JOHNSTON: From what I have heard, it sounds like
13 they are looking for six months to try to come into
14 compliance, and so the biggest question for us there is:
15 Is there a plan to make that happen?

16 We have heard that they will try to get into
17 compliance. They don't know if they will be able to 100
18 percent. At that point in time, they will re-evaluate it
19 at that point in time.

20 So even with the ask, there is still uncertainty at
21 the end of that six months what will actually happen at
22 that point in time, too.

23 MR. ENGELBERG: But you have heard nothing that makes
24 you or your company concerned that Hydro One will not
25 expend its efforts or increase its efforts during the six-
26 month time period, have you?

27 MR. JOHNSTON: Can you repeat that again, sorry?

28 MR. ENGELBERG: You have heard nothing during the

1 hearing or seen nothing in the evidence to make you fearful
2 that Hydro One will use the six-month period not to try to
3 comply, not to increase its efforts and not to bring itself
4 into compliance?

5 MR. JOHNSTON: With the request, as we see it, it
6 doesn't appear that there is anything that would prevent
7 them from not actually achieving that, as well.

8 I think the big thing to consider here is the fact
9 that this exemption is -- in our mind, anyways, it sends a
10 signal to the marketplace in terms of greater uncertainty.
11 And so with the expectations and the business models that
12 had been built in line with what the Distribution Code has
13 right now, it definitely will send a signal to the business
14 community that there can be changes. And it set as bit of
15 a precedent, as well, that we are concerned about in the
16 industry.

17 MR. ENGELBERG: I understand that you have said that,
18 but do you have concerns that Hydro One will not make great
19 efforts during the next six months to bring itself into
20 compliance?

21 MR. JOHNSTON: I think to be fair, there are concerns,
22 and I don't know if it's not because they don't put their
23 best foot forward. I don't think these the case, but there
24 are concerns that maybe they are not doing everything that
25 they can do, and maybe that's where greater analysis of the
26 situation can provide other solutions there, as well.

27 MR. ENGELBERG: Thank you. Now, if I can turn to the
28 survey that you filed as part of your affidavit that was

1 submitted in evidence? Does the Board have that in front
2 of them?

3 I don't want to go through the entire chart, because
4 it's very lengthy.

5 MR. JOHNSTON: Certainly.

6 MR. ENGELBERG: But perhaps I can point to a couple of
7 places. Based on -- if I could look at member response
8 number 5, Solar Power Solutions in Hearst, do you have that
9 in front of you?

10 MR. JOHNSTON: I do, yes.

11 MR. ENGELBERG: Now, if I can point to the first box
12 under "impacts from Hydro One delays to date", it says:

13 "It seems like in the Hearst region things are
14 going pretty smoothly."

15 And the reason I choose that one is not only because
16 it's a good response for Hydro One, but I think Hearst was
17 mentioned during yesterday's testimony.

18 And what I would like to ask you is: Would you agree
19 that there are in fact -- within Hydro One's broad service
20 territory across the province, there are in fact regional
21 differences which would affect Hydro One's ability to
22 respond to connection applications within the fixed rigid
23 timelines that we have in the two sections of the code?

24 MR. JOHNSTON: I would say that it's fair to say that
25 Hydro One has been -- has done a better job in different
26 regions than maybe other regions, yes.

27 MR. ENGELBERG: Thank you. And if I could point you
28 to response number 10, which is Evergreen Power Limited, a

1 couple of pages later, it says, if I could just read the
2 beginning:

3 "We do not typically experience long delays in
4 having a connection completed, provided that our
5 clients have already received and accepted a
6 connection agreement."

7 And the explanation goes on from there. Would you
8 agree that that response aligns with the data that Hydro
9 One presented yesterday in its statements that not all
10 connections are being delayed?

11 MR. JOHNSTON: I think that's fair to say.

12 MR. ENGELBERG: Thank you. Mr. Ray, if I could move
13 to you, can you explain to me what the role of Essex
14 Energy, the company that you work for, not the LDC -- what
15 the role of Essex Energy is in advising and dealing with
16 generation proponents?

17 I take it that that's what the role of Essex Energy
18 is?

19 MR. RAY: Specific to microFIT?

20 MR. ENGELBERG: Yes.

21 MR. RAY: So we design, build and install microFIT 10-
22 kilowatt ground-mount and roof-mount systems to customers.

23 MR. ENGELBERG: You mentioned -- I believe when you
24 were questioned by Mr. Myers, you mentioned the form C.
25 Are you familiar with form C?

26 MR. RAY: That's correct.

27 MR. ENGELBERG: And I believe you also mentioned that
28 you are a sister company -- your company is a sister

1 company of the Essex LDC; is that correct?

2 MR. RAY: That's correct.

3 MR. ENGELBERG: Do they use a form C, as well? I
4 recognize they may call it something else.

5 MR. RAY: Yes, similar.

6 MR. ENGELBERG: Are you familiar with the warning in
7 Hydro One's form C --

8 MR. RAY: Yes.

9 MR. ENGELBERG: -- regarding advice not to spend any
10 money until and unless a connection offer is received?

11 MR. RAY: Yes.

12 MR. ENGELBERG: Do you know whether the same warning
13 appears in the form C from your sister utility?

14 MR. RAY: I don't know offhand, not having it in front
15 of me, but...

16 MR. ENGELBERG: Did you in your capacity, I guess, as
17 an adviser and consultant or your company's capacity -- as
18 someone involved in this industry, do you advise the people
19 you deal with to heed that warning and not spend money
20 until they get an offer to connect, because for the many
21 reasons that we have heard today and yesterday, they might
22 never get one?

23 MR. RAY: We do now, yes. Since the change seemed to
24 occur from the September to early 2011 time frame, where
25 connection went from not being a barrier to now being a
26 barrier, absolutely we do.

27 MR. ENGELBERG: May I ask why you waited until that
28 time to give that advice? And to be fair to you, I am

1 asking that question, because Ms. Kingsley stated yesterday
2 in her evidence that Hydro One has always told the
3 proponents with whom it deals and has always had that
4 warning in its form C.

5 MR. RAY: Yes, so specific to the 13 projects in my
6 affidavit, we certainly considered it. We were aware of
7 it, but OPA market rules at the end of 2010 said where
8 there were conditional offer extensions due to delays in
9 the summer when they were going through program
10 difficulties with the ground-mount price adjustment, that
11 delayed everything.

12 So when it came to the end of the year, the market
13 rules for the OPA said, Build your project, get an ESA
14 inspection and get a request for a connection, and you will
15 be okay for domestic content extension and you will be okay
16 for a conditional offer extension due to the earlier
17 delays.

18 So we considered that, and we considered to the point
19 in time that we were at -- there had been no connection
20 denials that we had seen. And we also -- we also
21 considered the fact that basically the connections that we
22 had seen to date basically had -- what am I trying to say
23 there? Oh, back to the communication point was my last
24 point on that.

25 So the market rules from the OPA, the fact that
26 connection was not a barrier, and our communications with
27 Hydro One did not indicate that there were any further --
28 or there were any connection denials coming down the

1 pipeline. We were getting standard communication with the
2 weekly calls. We figured the risk was tolerable, and we
3 went ahead and built it, along with tens of hundreds of
4 others in Ontario.

5 MR. ENGELBERG: I think I understood part of that, but
6 I am not sure I understood all of it.

7 Are you saying that generation proponents,
8 manufacturers, and other people in the business,
9 consultants, knowingly took a business risk --

10 MR. RAY: No.

11 MR. ENGELBERG: -- as to whether the projects would be
12 connected? Or did they simply assume that capacity was
13 unlimited and that all projects would be connected,
14 regardless of having received an offer to connect from an
15 LDC?

16 MR. RAY: According to the rules and the OPA
17 consultations that we had attended leading up to the launch
18 of the microFIT program, there was no indication that
19 connection for small embedded micro-generation -- there was
20 absolutely no indication that there would be any issues
21 with connecting.

22 So knowing that, we did not, I guess, perceive a risk.

23 MR. ENGELBERG: So given the warning on the form Cs
24 from Hydro One and perhaps other utilities you said you are
25 not aware of, given that warning, did people in the
26 business feel that the warning, the caution that an offer
27 to connect might not be received, that offer was -- that
28 warning was meaningless?

1 MR. RAY: I can't speak for others in the business,
2 but as I stated, we did not see any risk associated with
3 not getting connection, based on our communications with
4 Hydro One.

5 MR. ENGELBERG: And are you aware of whether
6 generation proponents also felt that the warning was
7 immaterial?

8 MR. RAY: Again, I can't speak for other generation
9 proponents. I can speak for ourselves, and as I stated, we
10 went forward for the reasons I stated.

11 MR. ENGELBERG: And did you advise the other people in
12 your company that there was no risk, or did you discuss the
13 magnitude of the risk and whether the corporation was
14 willing to accept that business risk?

15 MR. RAY: My division that I run, we considered it.
16 We looked at what the market looked like. We looked at
17 what the OPA rules. We looked at the timeline extensions
18 that were required to make projects go, and the fact that
19 our communications with Hydro One had not indicated that
20 there was a risk to a denial. And we went ahead and built.

21 MR. ENGELBERG: All right. If I could have a moment,
22 just to see if there are any other questions?

23 Thank you very much, Madam Chair. I have no further
24 questions.

25 MS. CHAPLIN: I just have a follow-up, Mr. Ray, from
26 those last questions from Mr. Engelberg, to make sure I
27 understand what things were happening at what time.

28 You were describing how in the fall -- was it in the

1 fall that the OPA was explaining that if the projects were
2 built and you got the ESA, then you would get the
3 extension -- you would be able to meet the domestic content
4 and you'd be able to get the extensions on the conditional
5 offers?

6 MR. RAY: That's correct. And the request for a
7 connection.

8 MS. CHAPLIN: And is that the same period -- you were
9 also describing a period in -- I believe it was you. It
10 might have been one of the other witnesses. Describing a
11 period in which -- I think the words used were sort of
12 everything went quiet. There was a period of time where
13 there was not a lot of communication from Hydro One.

14 Does that coincide with that same period?

15 MR. RAY: The only communication coming from Hydro One
16 when we asked was: We had high volumes; there is a
17 backlog, and we will get to your application, essentially.

18 Not word for word, but yes, and from --

19 MS. CHAPLIN: That standard e-mail? Perhaps it's
20 similar to the one that was attached to the undertaking,
21 which said: We will get to you as we can, and also
22 included the health -- what I would call a health warning,
23 to not spend money until you got an offer.

24 MR. RAY: It varied. Phone calls obviously different
25 than e-mails. Most of ours were phone calls, but yes,
26 there was no indication that a mass round of denials or
27 connection denials was coming.

28 MS. CHAPLIN: And your experience up until that date,

1 am I correct that your experience up until that date is
2 that there hadn't been -- you had not received any refusals
3 to connect, to that point?

4 MR. RAY: That's correct.

5 MS. CHAPLIN: Okay. Thank you for that clarification.

6 MS. HARE: May I just ask a follow-up on that, because
7 I had the same little note?

8 You stated, Mr. Ray, there wasn't a mass round of
9 denials, but did you not understand that there could be a
10 denial because of the constraint?

11 MR. RAY: No. Based on our conversation and the
12 mandate from -- what were you saying there, Wes? The
13 mandate from the OEB...

14 MR. JOHNSTON: I believe in terms of the Ontario
15 government's position, connecting renewable energy projects
16 is a very key focus of the Ontario government. And I am
17 only paraphrasing, but I believe that that mandate has been
18 given to the OEB, forward to the LDCs, obviously, with the
19 caveat of safety and reliability and things of that nature
20 too.

21 So that kind of sets the framework, as well, in terms
22 of the other things that Mr. Ray talked about, coming from
23 the OPA in the fall there, as well.

24 MS. CHAPLIN: Mr. DeSota, you look like you're --

25 MR. DESOTA: We also have 15 -- well, actually, I
26 think more like 18 projects.

27 Just to speak to how we dealt with that, we did advise
28 the clients they were all in situations similar, where

1 their OPA contract would run out if they didn't install,
2 but if they did have it installed and the ESA inspection
3 done, they could get an extension. Okay?

4 And so their acceptances were held up, and we had
5 called. We went over with them the potential risks, so we
6 shared with them that we could all end up owning these
7 things. We could have to move them to someone else's site.
8 There could be that up to this date we hadn't received one
9 denial.

10 And by the way, the whole connection overload capacity
11 issues were part of our company discussions. From day one
12 when I came in, we had assessed that and we continued to
13 assess it, but we did use international standards and we
14 did assume that Canada would probably be following
15 international standards. We kind of felt like that
16 precedent had been set in a number of other cases.

17 And so we had done our calculations, and according to
18 our calculations, we weren't going to run into any ceiling
19 for probably two to three years yet.

20 And so we weren't unaware of that, but we were aware
21 in our discussions with Hydro One of what their screening
22 process was, the manual screening process. And I am just
23 going to say it upfront here, that 7 percent as -- because
24 we heard yesterday in testimony that: Oh, 7 percent was
25 always part of our calculation. If it was, it was not
26 transparent, and it was not told to anybody in the field.

27 I would say from our company view, having interacted
28 with Hydro One on a number of issues, the first time

1 7 percent was ever mentioned was in February 2011. It was
2 not brought up, aside from some whispers that we heard
3 before that from some inside people, that there might be
4 some changes coming.

5 So I would go back to that and I say I think there
6 needs to be further research. I would love to see proof
7 that 7 percent wasn't a change that occurred at that point,
8 because we were doing calculations. We are not in business
9 to fail and we are not in business to mess up our
10 customers.

11 We are carrying the bill for those 18 systems.

12 MS. CHAPLIN: Okay. Thanks for that.

13 Mr. Myers, do you have any questions in re-
14 examination?

15 MR. MYERS: No, I don't.

16 MR. CARTEN: Madam Chair?

17 MS. CHAPLIN: Oh, sorry. Mr. Carten?

18 MR. CARTEN: Do we get an opportunity to ask some
19 questions?

20 MS. CHAPLIN: I guess if you -- okay. Let's go ahead.

21 MR. CARTEN: I have a couple of questions, and maybe
22 my colleague --

23 MS. CHAPLIN: I hope that they are not about the
24 7 percent.

25 MR. CARTEN: No, they are not.

26 MS. CHAPLIN: Okay.

27 MR. CARTEN: I guess I will direct it to both Mr.
28 Hammerbacher and Mr. DeSota. Do you have -- I didn't get

1 quite a sense of -- what the sense of urgency was in your
2 minds in terms of resolving this.

3 If these issues do not get resolved, what's the impact
4 on your business?

5 MR. HAMMERBACHER: I can go first here, and I will say
6 up front is this issue we are talking about is one of about
7 a half a dozen issues that we have with various
8 bureaucracies in this process. But, overall, this has had
9 a very dramatic impact on our business.

10 At this point, we were supposed to have 500 employees
11 in Guelph. All we have is 350 right now, and we are losing
12 money on that operation. If we were strictly in this and
13 not thinking about our people, we would probably have had a
14 layoff by now, like some of the other module manufacturers
15 have publically announced.

16 So it's a very, very difficult situation right now,
17 and it's very hard to take when we have done our homework.
18 We knew what to expect. We covered every risk we possibly
19 could, except for the fact that maybe some of the other
20 people wouldn't do what they were supposed to do.

21 And so in terms of jobs, it's -- we basically have
22 three production lines in our facility and only one
23 running.

24 MR. CARTEN: So if this were to be deferred for six
25 months or -- what kind of time frame? Is nine months okay?
26 Is six months okay?

27 MR. HAMMERBACHER: I personally feel like if things
28 don't pick up in the next one or two months, that a lot of

1 our smaller clients are going to go out of business. And
2 that's a shame, because these were entrepreneurial
3 companies that -- you know, it was what this whole Green
4 Energy Act was about, to create new jobs, new employment.
5 And they have been struggling, because they can't get
6 applications through the process, and it's very hard for
7 them to hang on because they are new businesses.

8 They are not quite like Canadian Solar. Fortunately,
9 we have a global operation that we can lean on a little bit
10 here, but, believe me, I get eyes from our headquarters all
11 the time, Why aren't you achieving your forecasts?

12 MR. CARTEN: Counsel for Hydro One has, I think, asked
13 you or the panel whether there was anything yesterday that
14 led believe that Hydro One wouldn't put its best efforts
15 and put its shoulder to the wheel on this.

16 Is there anything in the testimony that appeared
17 yesterday that leads you to believe that they may not be
18 capable of achieving their goals, that they may or may not
19 have the processes in place to do what they need to do?

20 MR. HAMMERBACHER: All I can say is I was quite
21 surprised that they don't have the statistics of what's
22 causing the delays. That would be a fundamental thing I
23 would do in any kind of -- you know, I assume this is a
24 crisis situation if they are going to the Board here to ask
25 for this six-month delay.

26 I was quite surprised that they don't have that kind
27 of statistics. I don't know whether that's a capability or
28 just maybe it's not important.

1 MR. CARTEN: Thank you, sir. Mr. DeSota, do you have
2 a sense that Hydro One shares your sense of urgency on the
3 resolution of this matter?

4 MR. DESOTA: I do not. From what I heard yesterday,
5 there seemed to be a disconnect between the testimony and
6 the actual circumstances in the field.

7 MR. CARTEN: So if this kind of wandered on for
8 another six months, would it be a satisfactory result for
9 your company? What would be the impact on your business?

10 MR. DESOTA: Right now, we are discussing our
11 contingency plans. A couple of us have started to go on
12 part time, and I think we would all go into our contingency
13 plan, which is basically draw in and try to survive the
14 storm.

15 We do believe solar is going to be long term, so
16 hopefully when a couple of years, when the storm passes, we
17 will emerge.

18 MR. CARTEN: If the Board were to deny the
19 application, do you think that would resolve the problem?

20 MR. DESOTA: No, not necessarily. Something needs to
21 emerge from this. But I think neither the request for
22 exemption -- there has got to be a plan that emerges, and I
23 would like to see a plan emerge.

24 MR. CARTEN: One last question which I will ask. Any
25 one of the panel members can respond to it.

26 In terms of -- there is 6.2.6 and 6.2.7. In terms of
27 demand planning, which is the most important issue to deal
28 with on the timeline? Is it getting the approval or is it

1 getting the hookup?

2 MR. DESOTA: Getting the approval. The hookup impacts
3 us, because sometimes customers don't pay us until they are
4 hooked up, so we have to float things for a month or so.

5 But getting the approval.

6 MR. CARTEN: Mr. Hammerbacher, would you share the
7 view that getting the approval, from the point of view of
8 your customers' ability to give you orders, is the most
9 important issue?

10 MR. HAMMERBACHER: Certainly that's critical now,
11 because we do not issue any work orders until we have that,
12 so that's the key start point.

13 MR. CARTEN: Thanks. Madam Chair, I have no more
14 questions.

15 MS. CHAPLIN: Thank you. You have nothing in re-
16 examination?

17 MR. STEPHENSON: Madam Chair, I actually have a couple
18 of questions.

19 MS. CHAPLIN: I guess I should have canvassed people
20 first, because on the list I had from a few days ago, I
21 don't think any of you indicated that you were intending to
22 cross-examine these parties. So I apologize. I should
23 have done that.

24 MR. STEPHENSON: Yes, that is fine.

25 MS. CHAPLIN: So how long will you be?

26 MR. STEPHENSON: Five minutes.

27 MS. CHAPLIN: All right.

28 **CROSS-EXAMINATION BY MR. STEPHENSON:**

1 MR. STEPHENSON: I think this is mostly for Mr. DeSota
2 and Mr. Hammerbacher. I want to canvass with you the issue
3 of the distinction between the impact of the refusal of
4 applications on the one hand, and the delays of
5 application -- in the processing of applications on the
6 other.

7 You talked about how your supply chain operated in the
8 past and the modifications that you have made to your
9 supply chain now. I take it that -- we heard evidence
10 yesterday that it looks like some number, about a third of
11 all of the applications, give or take, are now being
12 refused.

13 You understood that, I take it? Is that consistent
14 with your understanding?

15 MR. DESOTA: That's -- yeah. I would say since that
16 date, far greater than a third are being refused, yes.

17 MR. STEPHENSON: Okay. And I think we also heard from
18 one of the witnesses yesterday that Hydro One's expectation
19 is that as more of these units come on line, it will be
20 incrementally eating up capacity, and, therefore,
21 directionally we will tend to have more constrained
22 refusals as time goes on.

23 You understood that, as well, I take it? And,
24 moreover, that would be consistent with the understanding
25 you always had that there would likely be constraints at a
26 point in time?

27 MR. DESOTA: Correct.

28 MR. STEPHENSON: In a world where you have got a third

1 or more of all applications being refused on the basis of
2 constraint, I take it that your former supply chain, where
3 you are purchasing on a COD basis, is simply unsustainable.
4 There is no process that that could be sustained?

5 MR. DESOTA: Fair.

6 MR. STEPHENSON: And that's got nothing -- that issue
7 has got nothing to do whatsoever with the issue of the
8 delays?

9 MR. DESOTA: No. I would suggest it still has to do
10 with the issue of the delays, because --

11 MR. STEPHENSON: Well -- okay, carry on.

12 MR. DESOTA: We do need to hear in a timely manner.

13 MR. STEPHENSON: If Hydro One had a perfect
14 100 percent on-time track record, but nevertheless there
15 was a 35 percent risk of refusal, you could not have a COD
16 model?

17 MR. DESOTA: I am not sure why not. At least we would
18 be in the realm of predictable and we would be getting
19 consistent responses in time.

20 MR. STEPHENSON: You are prepared to put a third of
21 your capital out on projects, your money, with your
22 suppliers knowing that a third of those projects are never
23 going to happen?

24 MR. DESOTA: No. We would be able to forecast
25 somewhat accurately, though, because we would be getting --
26 we would be getting consistent responses.

27 MR. STEPHENSON: But, again, that's got nothing to do
28 with delays. That's got to do with your knowledge of the

1 probability of refusals. It's got nothing to do with
2 delays, sir.

3 MR. HAMMERBACHER: I could answer that. So what Ethan
4 would do is place an order for two-thirds of his forecast
5 and deal with the one-third of rejections.

6 MR. STEPHENSON: Exactly.

7 MR. HAMMERBACHER: It's not a hard problem.

8 MR. STEPHENSON: I don't disagree with that, sir, but
9 that's got to do with your forecasting of the probability
10 of refusals. It's got nothing to do with the probability
11 of delay.

12 MR. DeSOTA: It still does, because contracts only
13 last for certain periods of time and we can only build
14 during certain periods of time, and so we need to know when
15 we are going to receive systems, when we are not, when we
16 can schedule building, when we aren't.

17 So it still -- it still absolutely relates.

18 MR. STEPHENSON: Well, I don't understand that issue
19 at all, I confess.

20 I understand more certainty is better than less
21 certainty, but with respect to the prospect of being paid,
22 that turns on the issue of whether the project proceeds.

23 If it's going to be delayed, that's just simply a
24 management issue that you can deal with your cash
25 management and hedge that.

26 MR. DeSOTA: I don't think you understand the
27 industry, sir.

28 We have warehouses and secondary warehouses. We just

1 spent quite a bit of time over in Kitchener with our
2 warehouse, discussing, because of delays, how we could
3 rearrange the stacking of our materials to mitigate costs.

4 So you don't -- there are so many layers to what a
5 delay does to the industry and our costs that I would say
6 you probably don't understand the industry.

7 MR. STEPHENSON: I understand this much, sir, that
8 these are very distinct, different questions.

9 In a world where you proceeded, where the assumption
10 was there was not going to be any constrained refusals, is
11 very different than one where the reality is that there are
12 constrained refusals.

13 That's a very fundamental change in your business;
14 isn't that fair?

15 MR. DeSOTA: That's a change.

16 MR. STEPHENSON: Let me move to this question. We
17 have heard a lot about how the delays have created market
18 uncertainty, and that's caused issues vis-a-vis business
19 uncertainty and problems for the whole supply chain.

20 That was the gist of the understanding of what I heard
21 from this panel; is that a fair characterization of the
22 message you are trying to send?

23 MR. HAMMERBACHER: I think market uncertainty would
24 cause a problem for any business, yes.

25 MR. JOHNSTON: And I would actually expand on that a
26 little bit, as well, whereby the delays have actually had a
27 negative impact on the end-customer, as well. And so when
28 the end-customer is not getting projects approved in the

1 manner that they expect, then they get frustrated and they
2 wonder: Well, when is it going to get connected?

3 I have heard from some of our members that customers
4 have eventually said: Okay, you know what? I'm not going
5 to go ahead with this anymore, because Hydro One is not
6 giving us that acceptance.

7 And so that is something that we have also heard, and
8 that goes to not only the short-term but possibly the
9 longer-term impact that this could have on the overall
10 marketplace.

11 And so that's definitely a concern for us, too.

12 MR. STEPHENSON: And that's a fair comment, and I
13 should have mentioned that.

14 But here is the difficulty I have. I hear you say
15 that, but then I look at the reality, and the reality that
16 we hear about is that Hydro One continues to receive
17 applications at a very, very high volume, that the market,
18 in fact, is not deterred by these delays. People are
19 lining up, 600 a week, to get these.

20 So that demand amongst the end-users is absolutely
21 undeterred by whatever issues there are in the market;
22 that's the reality, isn't it, sir?

23 MR. HAMMERBACHER: So actually no. I would expect a
24 lot more applications than what is happening right now if
25 there weren't all these delays and other problems.

26 So it just shows that there are still people
27 interested, but I think the numbers would be much better if
28 this was a smoother process and everybody was doing their

1 job.

2 MR. DeSOTA: And from a marketing standpoint, I'll
3 just tell you why you are getting so many right now. It's
4 pretty predictable.

5 There is an election coming up. The frontrunner has
6 made some statements regarding the program.

7 So what are we doing? We are going back to everybody
8 who has possibly been interested, and saying: Look, we
9 need to show continued interest in the program. That might
10 sway some political minds. That might show that there is
11 the will in Ontario to keep this going.

12 So if you have got the time, please put in an
13 application. Let's just get this market started, so that
14 we can point to the evidence in the political process, and
15 by the way, if it does get cancelled, if there is any
16 chance for you to get through, now is the chance.

17 So it's not -- it says nothing about the delays not
18 impacting the market. There are other factors.

19 MR. JOHNSTON: Yes. Just to add to that, definitely
20 it's much more dynamic than just that.

21 I would agree with Mr. Hammerbacher that it would
22 likely be greater applications in right now.

23 Couple of other factors. It is summertime, so more
24 people are thinking about solar energy right now.

25 We talked about the election and some of the impacts
26 there, but also there is the FIT review coming up this
27 fall, as well, and so there is a general understanding --
28 in the industry, anyway -- that prices may come down at

1 that point in time.

2 So in my mind, that's a -- if I was thinking about how
3 many applications we are going to be getting at Hydro One,
4 chances are you are going to have a lot more leading up to
5 the FIT review, as well.

6 So there are many different factors at play than just
7 the delays here in terms of forecasting.

8 MR. STEPHENSON: But just in terms of the evidence
9 that the Board has, in terms of the impact of the
10 uncertainty in the market, I take it that what you are
11 telling the Board is that even though the numbers are not
12 diminishing -- that is, as relative to earlier in 2011 or
13 in 2010 -- that they can't trust those numbers as truly
14 reflecting what market demand is? Is that what you are
15 telling us? That those numbers don't tell us the truth?

16 MR. JOHNSTON: I don't think that is what we are
17 saying.

18 MR. STEPHENSON: Well, but you are saying that this is
19 an artificial -- that these numbers are artificially high,
20 because they are affected by other factors; that is what
21 you have just told me, haven't you?

22 MR. JOHNSTON: I think that's the marketplace.

23 MR. STEPHENSON: But the numbers speak for themselves,
24 don't they? Demand for this program remains very high;
25 that is the simple fact of the --

26 MR. HAMMERBACHER: So, sir, if that's the case why is
27 Ethos talking about going part-time with their employees?
28 Why are we not hiring the people that we had planned to do?

1 It's exactly not the case. We are not seeing near the
2 market that we forecast six months ago.

3 If you were saying that the delay is not the only
4 problem that Hydro One has created for our market, I 100
5 percent agree with you on that, but if you are saying the
6 delay doesn't have anything to do with the effects on our
7 market, I have to disagree.

8 MR. JOHNSTON: And another point to add to that, the
9 number of applications going in is different than the
10 success of those projects, as well, and so --

11 MR. STEPHENSON: Absolutely. We have heard about
12 that, but my point is that we have heard evidence that
13 demand was significantly higher than forecasted initially,
14 and we have heard evidence that demand continues to be at
15 those high levels.

16 MR. DeSOTA: Forecasted by who?

17 MR. STEPHENSON: Well, the evidence we heard was the -
18 - forecasted by the OPA and the Ministry of Energy. That's
19 the forecast that I am -- that I am referring to.

20 So I am not talking about your internal forecasts; I
21 am talking about the official forecast.

22 MR. HAMMERBACHER: If I could add that -- one of the
23 things, I think probably one of the biggest issues, is
24 really a bad communication system, not only in Hydro One
25 but between the OPA and Hydro One.

26 So we have talked about our process, how we get with
27 our customers and ask their forecast. I would be
28 interested to know if Hydro One has ever got with their

1 customers to get their forecasts of connections. That
2 would be a pretty simple thing, is if we are truly treated
3 as a customer, ask the customer what their forecast is. I
4 bet you there wasn't be any surprises. Oh, why are we
5 getting 1,000 applications this month?

6 Some of the things we have just talked about are
7 common knowledge amongst the industry. I have volunteered
8 many times to sit down with the Ministry of Energy, with
9 OPA, to go over what our plans are so that you guys can
10 plan better your activities.

11 I agree if you sat in a dark room, you are going to be
12 surprised all the time, but there is certainly -- on our
13 side, there is no unwillingness to share our forecasts with
14 Hydro One.

15 And all these things we are talking about should be
16 common knowledge, and if Hydro One doesn't know that, let's
17 have a sit down. I will give you Canadian Solar's
18 forecasts.

19 MR. STEPHENSON: Just one last thing, and that is: Is
20 it fair to say that so long as -- 600 applications a week
21 or whatever the number might be, so long as people are
22 applying and the applications are being processed and the
23 applications are being approved at a point in time, there
24 are going to be vendors and installers out there that are
25 going to meet that need?

26 There is no doubt about that; isn't that fair?

27 MR. JOHNSTON: Assuming that customers don't cancel
28 their orders first if they get frustrated at the delays.

1 MR. DESOTA: Or don't buy in the first place.

2 MR. JOHNSTON: Or don't buy in the first place.

3 MR. STEPHENSON: Right. But so long as there is
4 customers out there that are willing to buy, there is going
5 to be vendors out there willing to sell; isn't that fair?

6 MR. JOHNSTON: I think another thing to consider,
7 however, is that the delays add costs to everybody
8 throughout the supply chain, and cost is a big concern for
9 the industry in terms of keeping those costs down, as well,
10 for the ratepayer, for the taxpayer. So I think that is
11 something we are trying to achieve, as well, as an
12 industry.

13 As Mr. Hammerbacher talked about, that's an area where
14 we can maybe share some of our forecasts to try to work as
15 a complete supply chain here with Hydro One, to try to even
16 that out so we can effectively manage that supply chain and
17 keep costs lower.

18 MR. STEPHENSON: Fair enough. Thank you. Those are
19 my questions.

20 MS. CHAPLIN: Thank you, Mr. Stephenson. Ms. Hare --

21 MS. BRANT: Madam Chair, I have one quick question.

22 MS. CHAPLIN: Okay.

23 **CROSS-EXAMINATION BY MS. BRANT:**

24 MS. BRANT: To the panel, at any time before
25 yesterday's testimony, did Hydro One ever send to you a
26 notice that explained to you the percentage of refusals
27 that is happening on a grand scale?

28 MR. HAMMERBACHER: No.

1 MR. RAY: They haven't sent anything to Essex Energy.

2 MS. BRANT: Thank you. That's my final question.

3 **QUESTIONS BY THE BOARD:**

4 MS. HARE: I have one question and it's to the entire
5 panel, and it's respecting the Hydro One request for
6 exemption from 6.2.7 in their proposal to, instead, have
7 something parallel to 7.2.1, 7.2.3.

8 And in their application, you would have noticed Hydro
9 One put forward that some of these things in 6.2.7, the
10 five-day window, are outside of their control, and so they
11 are saying that the clock starts ticking after all the
12 service conditions are satisfied.

13 So I wanted your views as to, if that was to be
14 implemented, would that have any impact on your businesses.

15 MR. DESOTA: I would suggest two things. One, yeah,
16 if they were meeting it 90/95 percent of the time and there
17 were the expected delays with, Oh, we couldn't get a locate
18 done, that's one thing; right? Our experience has been far
19 different from that.

20 The other thing that you should understand is that
21 five-day window can be a little bit of an interesting
22 explanation, because once they have given an offer to
23 connect, it's usually 30 to 60 days, in our experience,
24 before they are going to get the ESA, because we get the
25 offer to connect, right, and then we tell the customer,
26 Great, because our process goes this way.

27 Except for in those few where customers wanted to go
28 ahead so they didn't lose their OPA contract, right, our

1 process goes this way. We don't put you in the install
2 schedule until you get a C form approval, and then we put
3 you in the install schedule. Usually it's a month out
4 until you are going to get installed, and then usually
5 there is an intervening period of two to four weeks where
6 contractors are working on things, making sure everything
7 is set. Then there is an ESA approval, and then the five-
8 day period starts.

9 So in most instances, there would be a huge period of
10 time after that offer to connect that Hydro One has to be
11 able to deal with some stuff.

12 And, secondly, the percentage of jobs that have those
13 issues we would say would be very, very small. So
14 basically what I heard yesterday is we took an issue that
15 maybe affects 3 to 5 percent of our jobs, and it was blown
16 up to be the reason for 30 percent.

17 And that was the difficulty for me, is I am sitting
18 there and going, Wow, this is an issue that really is
19 fairly small, these extra things that need to be done, and
20 in the 3 to 5 percent that it affects, it's no big deal,
21 because we are in the construction industry.

22 But that's not what's going on in the field and that's
23 not the reason that we would say the delays have occurred.

24 MR. HAMMERBACHER: I would just -- there are a couple
25 of issues. I think if Hydro One had come to this and said,
26 Look, 30 percent of the time the customer is asking for
27 delay and how should we be responsible for that, then I
28 think that would be a quite clear and easy solution, okay?

1 That's excluded.

2 If they said 10 percent of the time the delay is
3 caused because you had to construct a road or something
4 like that, if they had those concrete examples of what's
5 causing these delays, then you could go through their line
6 item and say, Yes, that deserves an exemption; yes, that
7 deserves an exemption.

8 But if I listened to the testimony yesterday, I would
9 have got the clear perception that customers are causing
10 all these delays, because if you ask -- it was mentioned
11 several times yesterday in the testimony that, well, the
12 customer sometimes asks for the delay.

13 When asked what kind of things cause the delay, Well,
14 the customer sometimes asks for the delay. So I would get
15 the impression that must be the lion's share of the
16 problem.

17 So, really, if there was some discreet data - and they
18 have got to have that data if they really care about this
19 problem - then if they presented that to you and asked for
20 exemptions for these causes, that to me is a much more
21 concrete solution than just giving a six-month delay
22 without any kind of data to back that up.

23 MR. JOHNSTON: And if I could add one other thing, the
24 solar industry, CanSIA in particular, we see Hydro One as a
25 stakeholder. We really do. This is a long-term play, and
26 we feel that we want to be collaborative. We want to
27 ensure that we have a good working relationship between
28 Hydro One and the industry.

1 And I think that even if we had have come to a meeting
2 even before the OEB hearing, before this process, maybe
3 there is things that we could have worked out together in
4 terms of, Well, these are some of the issues that we are
5 having with timelines. And the industry obviously has
6 information on, okay, what are the issues that we are
7 dealing with with those timelines, as well.

8 So I think definitely going forward, better
9 communication with all stakeholders I think could be
10 beneficial. And I think that there is a learning curve
11 here for everyone, and greater communication going forward
12 could be beneficial for all to try to achieve what we want
13 to achieve here in Ontario.

14 MS. HARE: Thank you.

15 MS. CHAPLIN: All right. Thank you very much. The
16 panel is excused with the Board's thanks.

17 Since it is almost 11:30, we will actually take the
18 lunch break now and we will return at 12:30. Who is going
19 to be testifying next? Is it OSEA or Solar Energy who will
20 be first up? All right.

21 All right, we will resume at 12:30. Thank you.

22 --- Luncheon recess taken at 11:24 a.m.

23 --- On resuming at 12:36 p.m.

24 MS. CHAPLIN: Are there any preliminary matters before
25 Mr. Carten takes the stand?

26 There being none -- oh, sorry. Yes, Mr. Engelberg?

27 MR. ENGELBERG: Madam Chair, I just wanted to mention
28 that Hydro One has handed out Undertaking J1.8.

1 MS. CHAPLIN: Thank you.

2 Thank you, Mr. Carten.

3 **SUSTAINABLE ENERGY TECHNOLOGIES - PANEL 1**

4 **Michael Carten; Sworn.**

5 MS. CHAPLIN: Mr. Myers, are you introducing Mr.
6 Carten?

7 MR. MYERS: Yes, I will be.

8 **EXAMINATION-IN-CHIEF BY MR. MYERS:**

9 MR. MYERS: Mr. Carten, can you please state your
10 name, company and position with the company?

11 MR. CARTEN: My name is Michael Carten. I am
12 president of Sustainable Energy Technologies.

13 MR. MYERS: And briefly, what is the nature of the
14 business operated by Sustainable Energy Technologies?

15 MR. CARTEN: Sustainable manufactures inverters, power
16 inverters for solar power systems.

17 MR. MYERS: And as chairman and CEO of the company,
18 what are your responsibilities?

19 MR. CARTEN: Generally, oversight of the business,
20 making sure business continues to run, and general
21 direction in terms of where our business will go.

22 MR. MYERS: And how long have you been with the
23 company?

24 MR. CARTEN: I have been with the company since
25 inception, which was about 11 years ago.

26 MR. MYERS: Are you one of the co-founders of the
27 business?

28 MR. CARTEN: I am a co-founder.

1 MR. MYERS: And prior to co-founding this company, as
2 I understand it, you were director and senior vice
3 president for corporate and government finance for BMO
4 Nesbitt Burns in Calgary?

5 MR. CARTEN: I was.

6 MR. MYERS: And prior to that role, as I understand,
7 you were a partner in a large national law firm?

8 MR. CARTEN: I was.

9 MR. MYERS: Did you participate in or oversee the
10 preparation of your affidavit and the correction to your
11 affidavit that subsequently filed?

12 MR. CARTEN: I did.

13 MR. MYERS: And do you adopt that amended affidavit as
14 your evidence in this proceeding?

15 MR. CARTEN: I do.

16 MR. MYERS: Thank you.

17 MS. CHAPLIN: Thank you.

18 Can I canvass, first of all, to find out which parties
19 have questions for Mr. Carten?

20 Mr. Stephenson, do you have any questions for Mr.
21 Carten? Not that I am asking you necessarily to go first,
22 but just so I know who I need to have on my list.

23 MR. ENGELBERG: I will have a few, probably.

24 MR. STEPHENSON: I don't think so.

25 MS. CHAPLIN: Okay. Ms. Brant? No?

26 MS. SEBALJ: Board Staff has one or two.

27 MS. CHAPLIN: All right. Ms. Sebalj, why don't you go
28 first?

1 **CROSS-EXAMINATION BY MS. SEBALJ:**

2 MS. SEBALJ: Mr. Carten, I have read your affidavit,
3 and my question to you is the same or similar to the one
4 that I posed to the panel this morning, the Canadian Solar
5 panel.

6 And that is, given the evidence that we have heard
7 over the last day and a half, and particularly from Hydro
8 One, do you have a best-case scenario or a proposal that
9 you would think is appropriate in response to the
10 application by Hydro One?

11 MR. CARTEN: I do. We have been working very hard
12 with Hydro One as part of the CanSIA effort to try and find
13 solutions to the interconnection issues. We have learned a
14 lot as a result of that, and we have some thoughts in terms
15 of a roadmap that could be laid out that might lead to a
16 resolution faster.

17 MS. SEBALJ: Do you have any personal experience
18 through your company with this situation that we spoke of
19 yesterday, which is an indirect connection -- in other
20 words, a standard parallel connection where a site
21 assessment is required within the 15 days -- and whether --
22 and do you have an opinion on whether that is a legitimate
23 timing concern for Hydro One or not?

24 MR. CARTEN: I don't think we have an opinion on that.

25 We have some experience through the company. I don't,
26 and I am not an electrical engineer or even an engineer,
27 but I don't think we would be able to form an opinion on
28 that side of the business.

1 MS. SEBALJ: Those are all Board Staff's questions.

2 MS. CHAPLIN: Thank you.

3 Mr. Engelberg?

4 MR. ENGELBERG: Thank you, Ms. Sebalj.

5 Could I have just a moment, Members of the Panel?

6 Thank you.

7 MS. CHAPLIN: Certainly.

8 MR. ENGELBERG: Madam Chair, I think because of the
9 manner in which the scope of the hearing was set yesterday
10 morning as a first matter, regarding the technical
11 standards, I have no questions of this witness.

12 MS. CHAPLIN: All right. Thank you, Mr. Engelberg.

13 The Board Panel has no questions, Mr. Carten.

14 MR. CARTEN: No questions?

15 MS. CHAPLIN: No. Thank you very much.

16 Ms. Brant, are you ready to bring your witnesses
17 forward?

18 MS. BRANT: Certainly.

19 **ONTARIO SUSTAINABLE ENERGY ASSOCIATION - PANEL 1**

20 **Marion Fraser; Sworn.**

21 **EXAMINATION-IN-CHIEF BY MS. BRANT:**

22 MS. BRANT: Thank you for appearing today, Marion, on
23 behalf of OSEA.

24 You have submitted an affidavit dated August 5th; do
25 you adopt your affidavit as your evidence in this
26 proceeding?

27 MS. FRASER: I do.

28 MS. BRANT: Now, in your affidavit you also set out

1 your CV with your experience; is that correct? Up to date
2 CV?

3 MS. FRASER: Yes.

4 MS. BRANT: Thank you. Now, you also state in your CV
5 you are the president of Fraser & Company, and that you
6 have 30 years of experience in the energy sector; is that
7 correct?

8 MS. FRASER: Actually going on more than 30, now.

9 MS. BRANT: So you have an understanding of the issues
10 that are here before the Board today?

11 MS. FRASER: I have a unique understanding of the
12 issues here today, yes.

13 MS. BRANT: Why don't you take us through a little bit
14 of your background and understanding that you believe
15 brings this unique position?

16 MS. FRASER: Well, I think my position in terms of
17 understanding the issues here today stem from the fact that
18 I have sat on various sides of various tables with respect
19 to these issues.

20 For example, I was in meetings with the Alternative
21 Energy Commissioner in 2003, where the issues of
22 connecting, particularly small renewable projects, was
23 raised as a major barrier, and subsequently -- I am sure it
24 was part and parcel of that process -- was the directive to
25 the Ontario Energy Board from Minister John Baird in June
26 of 2003.

27 Now, if we go a couple of months further on, I was
28 sitting in a room at the IESO on August -- in August of

1 2003 when the lights went out.

2 I was there to talk about smart metering and other
3 activities, so it was kind of an interesting perspective to
4 be there when the lights went out.

5 And of course, I had been very involved in the energy
6 sector prior to this, working with Ontario Hydro, working
7 as an independent consultant for a large variety of firms,
8 working for Enbridge Gas Distribution as their director of
9 marketing, and then also playing a role on many boards of
10 directors of organizations, associations, and even some
11 corporations.

12 So however, out of the blue in October 2003 when the
13 Liberals were elected, they actually invited me to come and
14 work in the office of the Minister of Energy, to be a
15 senior policy advisor. And I would often jokingly say that
16 I am senior because I am old, because usually those people
17 are very young, bright people who have pounded the pavement
18 with the candidate, and that was not my background. My
19 background was subject matter experience in the energy
20 sector.

21 And my mandate really was to ensure that
22 sustainability was a key element of energy policy, and so
23 there was a focus on conservation and renewable energy.

24 So 2004 passed, and we -- moving forward on a variety
25 of things. Obviously, I can't share things that were
26 confidential and I won't. However, most of what I will say
27 is essentially in the public record in various places.

28 Obviously, the Ontario Power Authority was

1 established, and we transferred the responsibility for
2 procurement that had already begun both for clean energy,
3 as well as for renewable energy and that was known as RES
4 1, renewable energy, RES 1.

5 Now, shortly thereafter, because it became kind of
6 clear that the process was shutting out a lot of the people
7 who really wanted to have a part in this industry, and that
8 was consumers, ratepayers that wanted an opportunity to
9 generate power in their -- on their own property and sell
10 it back to the grid.

11 There had been a fair bit of work done as a result of
12 the previous government in terms of net metering, but
13 clearly the way that Ontario's electricity market operated,
14 net metering did not provide the kind of financial stream
15 to support the construction of renewable energy with any
16 kind of certainty.

17 This is where I first became aware of and worked with
18 members from the Ontario Sustainable Energy Association.
19 They were very, very proactive, and they released a report
20 that they had initiated and actually got the Ministry to
21 provide some funding, separate from the political process,
22 called "Powering Ontario Communities: Proposed Policy For
23 Projects Up to 10 MW".

24 And this was really to focus on letting farmers, First
25 Nations, individuals, communities, not the large corporate
26 entities per se that were developing the wind farms, but
27 the real people, the people who actually -- consumers of
28 electricity and ratepayers of the system who had been there

1 and had actually paid for the infrastructure that exists to
2 date.

3 So that was a very, very in-depth report, and, as a
4 result of that, the Minister at the time, Dwight Duncan,
5 provided a letter to the Ontario Energy Board and the
6 Ontario Power Authority asking them to develop a standard
7 offer program that would overcome the problems that the net
8 metering created, which was the price wasn't high enough
9 and didn't reflect all of the costs associated -- all the
10 costs and all the benefits, really, associated with cleaner
11 energy.

12 If you recall, it was about the same time that the
13 government determined what the additional costs of burning
14 coal was, which was pretty significant, but obviously those
15 costs are not embedded in the price of electricity. Those
16 costs were not associated with renewable energy, and were
17 much less for clean energy, but there was no way to
18 monetize those things.

19 What was needed was a program that provided that, but
20 what was also clear, as was clear to John Baird in 2003,
21 that there needed to be some changes in the processes by
22 which these small generators, particularly those small
23 generators that were also consumers and ratepayers, could
24 connect to the system.

25 And so that was part of Minister Dwight Duncan's
26 letter, and he asked for both clean and renewable standard
27 offer. And by "clean" there, he intended -- he clearly
28 meant combined heat and power, high efficiency, which was

1 not coming through the Ontario Power Authority procurement
2 processes. They had had -- and after that, they even had
3 more significant delays getting combined heat and power in
4 place.

5 MS. BRANT: So, Marion, tell us about the RESOP.

6 MS. FRASER: RESOP? Okay, sure.

7 MS. CHAPLIN: I am going to just interrupt you for a
8 moment. I think it could be quite helpful for us to
9 understand how your direct experience in these past events
10 bears on the issues before us today, but I don't think we
11 need quite the level of detail that you are providing at
12 this point. So if you could perhaps use that to guide your
13 answers, thank you.

14 MS. FRASER: Okay. All right. My first training was
15 in history, so...

16 Anyway, as a result of that letter, in December of
17 2005, the Ontario Power Authority and the Ontario Energy
18 Board came forward with a draft program which ultimately
19 became known as RESOP, the Renewable Energy Standard Offer
20 Program.

21 Now, by this time, the Minister Donna Cansfield, she
22 was extremely excited about it and took a very active
23 interest in it. And on March 2006, Premier McGuinty and
24 Dr. Suzuki announced that RESOP would be introduced to
25 facilitate individuals, farmers, First Nations and
26 communities to generate renewable energy to connect to the
27 local distribution grids. That was the basis of the
28 program, the distribution grid targeted at individuals,

1 farmers, First Nations and communities.

2 And, coincidentally, that announcement was made at the
3 plant that Mr. Hammerbacher worked at before his current
4 position, so he understood that this was definitely meant
5 to be as much a rural program as an urban program.

6 MS. BRANT: Okay. Thanks, Marion. So you talked
7 about the RESOP program. You talked about it being a
8 program that was designed for up to 10 megawatts. Clearly
9 that also includes the 10-kilowatt projects that we are
10 dealing with before the Board today.

11 Fast forwarding, to pick up on the Madam Chair's
12 point, to the microFIT program, the microFIT program being
13 all about capacity allocation exempt. Is this not the same
14 type of policy programming that we've been involved in
15 since 2003?

16 MS. FRASER: Oh, exactly. This was yet another, I
17 guess, effort and refined policy and programs to deliver on
18 that, and I think the -- you know, I don't think there is
19 any question, and I didn't hear from the proponent in this
20 case that they questioned in any way, that there is a
21 strong commitment to renewable energy in the government.
22 The supply mix directive in 2006 doubled renewables.

23 Now, unfortunately, just as we were about to implement
24 or launch RESOP, because it took a while for the actual
25 details of the program to roll out, Hydro One essentially
26 made it known that there was constraints in particularly
27 the Bruce area, but also northern Ontario, and so we ended
28 up with a whole bunch of orange zones around the province.

1 MS. BRANT: Let me stop you there. What I would like
2 to know is: The program, you mentioned it being refined,
3 so the refinement has been to go from RESOP, now to
4 microFIT, and what we have is a capacity allocation exempt
5 program for microFIT proponents.

6 MS. FRASER: That's right.

7 MS. BRANT: So what does "capacity allocation exempt"
8 mean to you?

9 MS. FRASER: It basically said these were -- the under
10 10 kilowatts were so small that it really should be, if you
11 pay, you play. And that essentially, I think, was what I
12 heard this morning from the CanSIA members that testified,
13 that there was a certain sense that these small things -- I
14 mean, 10 kilowatts is essentially six hair dryers, or the
15 reverse of six hair dryers, I guess. And we really -- you
16 know, it was just a matter of getting on with those.

17 MS. BRANT: So capacity allocation exempt, which is
18 the microFIT, the root of the exemption that we are seeking
19 for today, to you means projects that should be connected?

20 MS. FRASER: Exactly.

21 MS. BRANT: Okay. So my next question is to just
22 touch on one more point. Your affidavit goes into detail
23 about, in your view, what you believe the public interest
24 is that's at risk. Some of the statements you made
25 earlier, talking about 2003, your affidavit also mentions
26 that you cast the public interest broader than just the
27 applicants that are facing difficulties today, but that the
28 scope, in your view, is broader.

1 So the one question that I have is to hear from you.
2 We also heard this morning from the CanSIA panel. One of
3 the presenters or one of the panel members explained how
4 there was a difference between certain contracts that were
5 awarded, microFIT contracts that were awarded before
6 December, and certain microFIT contracts that were awarded
7 after December, that there was a change in the Ontario
8 Power Authority rules. This has been talked about a bit.

9 And what was said this morning was that the OPA had
10 asked those applicants to go forward, invest, go obtain
11 their ESA, and then, you know, get your connection?

12 MS. FRASER: Right.

13 MS. BRANT: Now, we know also that the OPA contracts
14 have an expiry date, that that was also altered in that
15 process back in December, so my question, Marion, is: Now
16 that those contracts, those batches that are going to be
17 coming through are confronting the issues that's before the
18 Board today with the inability to connect -- you know, we
19 have heard, we have heard testimony about the offer to
20 connect, but what we are really -- what -- the question
21 still remains on the connection, which is -- which still we
22 are piecing together, I take it, or it feels like.

23 What is going to happen to those contracts that are
24 unable to get the connection?

25 MS. FRASER: Well, those contracts that get their
26 approval and are not refused now are in jeopardy of not
27 getting their connection before their contract expires,
28 because that period that the OPA has allowed that to happen

1 has been cut in half. And we heard yesterday about
2 projects that were taking 400 days, and -- to get
3 connections, and, you know, six months is a lot less than
4 400 days.

5 And in this case, they actually have to be built. And
6 so all supply chain issues that CanSIA talked about become
7 even tighter as a result of that process. And under RESOP
8 the first stop was the LDC, and essentially Hydro One was a
9 huge bottleneck for RESOP, and now what microFIT did or
10 what FIT and microFIT did was change that process, but
11 clearly, nothing has changed in that bottleneck,
12 particularly with respect to Hydro One. That bottleneck
13 still exists. It existed in RESOP. You know, we saw in
14 the "Gospel of Green" the poor farmer in Cobden had
15 exchanged over 1,000 e-mails with Hydro One.

16 And when I saw this submission or application for
17 exemption, I thought: Well, can we -- how can we expect
18 that anything is going to be different? Because they have
19 had this same message since 2003, and nothing makes --
20 nothing seems to make a difference.

21 MS. BRANT: Thank you, Marion.

22 Those are my questions.

23 MS. CHAPLIN: Thank you.

24 First of all, I will find out who has questions for
25 Ms. Fraser.

26 MR. MYERS: I have one question.

27 MS. CHAPLIN: Okay. Board Staff?

28 MS. SEBALJ: Board Staff has questions, yes.

1 MS. CHAPLIN: Mr. Engelberg?

2 MR. ENGELBERG: I will have a few.

3 MS. CHAPLIN: Mr. Myers, why don't you go ahead?

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

5 MR. MYERS: Thank you.

6 Ms. Fraser, you referred on several occasions in your
7 testimony just now to capacity allocation-exempt
8 facilities.

9 In the Distribution System Code, there is a specific
10 definition for capacity allocation-exempt. It's a long
11 term: "capacity allocation-exempt small embedded generation
12 facilities."

13 And that specifically refers to embedded generation
14 facilities that are not micro-embedded facilities, and
15 which have a nameplate capacity of 250 kilowatts or less.
16 And so micro-embedded facilities are actually carved out
17 just at the bottom there of 10 kilowatts or less.

18 Were you specifically meaning to refer just to those
19 10-kilowatt or less projects that relate to the microFIT
20 program?

21 MS. FRASER: Well, that's what the scope of this
22 hearing is all about, microFIT, but I think the same
23 comments could be made with respect to the other ones, as
24 well.

25 MR. MYERS: Thank you.

26 MS. CHAPLIN: Ms. Sebalj?

27 **CROSS-EXAMINATION BY MS. SEBALJ:**

28 MS. SEBALJ: Just to start where your direct left off,

1 I just wanted to clarify, is it not the case that a
2 proponent whose contract with the OPA is about to expire
3 because they haven't connected can request an extension?

4 MS. FRASER: There has been -- actually, I just got an
5 e-mail the other night, and they don't know. And it is
6 about to expire, I mean, immediately, and they don't know
7 if they are going to get an extension. It's not -- it is
8 not clear, and I think that's one of the gaps in the
9 overall process that really needs to be addressed.

10 When the problem is not a proponent-driven problem,
11 the problem is between any of the agencies, the customer
12 ratepayer proponent should not be held accountable.

13 I still get calls from people in the field that I
14 dealt with when I was in the Minister's office, you know,
15 begging me to help them on projects, and I put them in
16 touch with the Renewable Energy Facilitation office.

17 Ironically, that's the first time anyone has mentioned
18 that office, and yet it was created to help facilitate all
19 this renewable energy, and yet we seem to just have
20 processes that go round and round in circles.

21 MS. SEBALJ: But I just wanted to confirm with you
22 they can apply for the extension, whether or not they get
23 it.

24 MS. FRASER: Exactly. They can apply.

25 MS. SEBALJ: My understanding is that it can be for up
26 to 12 months; is that the case? Is that your
27 understanding?

28 MS. FRASER: Yes.

1 MS. SEBALJ: Do you know whether that extension is
2 from the date that they originally applied, or from the
3 date that they apply for the extension?

4 MS. FRASER: I am sorry, I can't -- I would have to go
5 and look at that. I know that one project -- it was not a
6 microFIT project -- but basically the staff at the OPA
7 laughed when he tried to say that the -- not getting the
8 Hydro One connection, and was a force majeure. They just
9 laughed at him, told him it didn't apply.

10 MS. SEBALJ: So in your affidavit, you speak to two
11 what I will call proposed solutions; you may have a
12 different characterization for them. But you talk about
13 Hydro One should be required to file a Green Energy plan,
14 and you also speak of Hydro One being required to -- not
15 required to, but Hydro One should apply for a rate rider.

16 Can you just tell us a little bit about those two and
17 what you think -- most importantly, from our perspective,
18 is what you think those would accomplish in the context of
19 this hearing?

20 MS. FRASER: Well, as was stated yesterday, Hydro One
21 did come forward with a green energy plan, and I was very,
22 very pleased to see that when that happened. And they did
23 recognize that the smart grid, the green grid and the
24 healthy grid were all one and the same and should be
25 treated the same, or integrated and dealt with.

26 However, I gather it was premature, because the
27 Ontario Energy Board hadn't put the guidelines out for what
28 should be in the green plan, and so on.

1 So we really need -- like, it's one thing to say: We
2 have capacity constraints and so we're refusing your
3 project, but what are we going to do about improving the
4 capacity? What are we going to do about going forward and
5 using technology, using smart technology, communications
6 technology, to bring our system into the 21st century so
7 that we can connect all these renewables?

8 And that's what I see would be of value in the green
9 energy plan.

10 On top of that, in terms of the whole issue of a rate
11 rider, I can't accept that if Hydro One has enough
12 resources to do the things that they are supposed to be
13 doing, then why aren't they doing it, and if they are not
14 doing it because they don't have enough resources, then why
15 aren't they doing it.

16 So I think there is an opportunity for them to apply
17 for more resources, and they need to either figure out what
18 the problems are or at least get the resources to get this
19 bottleneck out of the way right now.

20 MS. SEBALJ: That was going to be my next question to
21 you about resourcing, but you have answered it.

22 Basically whether you felt after hearing yesterday's
23 evidence whether there truly is a resourcing problem, and I
24 am hearing you say that there is, in your view.

25 MS. FRASER: Well, I don't think we know what the
26 problem is.

27 MS. SEBALJ: In paragraph 16 of your affidavit, you
28 speak to this concept of the public interest, which your

1 counsel has taken you to in your direct.

2 You speak of also the applicants that were previously
3 affected by the bottleneck of applications that previously
4 existed at the connection stage, pre-microFIT.

5 I am just wondering how it is that this Board can
6 redress issues from the past.

7 MS. FRASER: Well, I think the issue of the issues
8 from the past, I think, is really the matter that none of
9 this is a surprise. This has been eight years as an
10 ongoing struggle for proponents in the field to do this.

11 So the fact that it's been festering for eight years I
12 think is a problem for the public interest, but you are
13 right. You can't go back and change the past, but let's
14 get on with it in the future so that the public interest,
15 whether it's the jobs that are at stake here, whether it's
16 the economic development that's at stake here, whether it's
17 the environmental protection that's at stake here, whether
18 it's the availability of supply to replace coal that's at
19 stake here, all of those things are in the public interest.

20 I think one of the things that I saw in the 2008
21 decision by the Energy Board was that the fact that it
22 recognized that there was a difference between a micro-
23 embedded project where it was a customer that was going to
24 be generating and even a brand-new load customer.

25 And from my point of view, I think that is a critical
26 differentiation, because it recognizes that it's those
27 customers, those ratepayers that have paid for the system
28 over the last 106 years, and the public interest has to

1 allow them to be able to do that. And it's in the public
2 interest for them to be able to generate more power, and I
3 think that is what regulation is all about, is to protect
4 that public interest.

5 And it's got to be on a go-forward basis. I recognize
6 you can't change the past, but let's learn from the past,
7 not just keep doing the same things over and over again and
8 wondering why it doesn't change.

9 MS. SEBALJ: Thank you. Those are all our questions.

10 MS. FRASER: Okay, thank you.

11 MS. CHAPLIN: Mr. Engelberg.

12 **CROSS-EXAMINATION BY MR. ENGELBERG:**

13 MR. ENGELBERG: Thank you. Ms. Fraser, perhaps I will
14 go in reverse order. You just mentioned a minute ago that
15 this problem has been festering for eight years. Could you
16 tell us, when did the RESOP program begin and when did the
17 microFIT program begin?

18 MS. FRASER: The RESOP program was announced in March
19 of 2006, and it was formally launched on November 22nd,
20 2006, but I would suggest that this issue goes back to some
21 of the net metering issues that were raised prior to 2003.
22 And I am sure if we went back to the days of the non-
23 utility generators, we would also be able to dig up
24 essentially similar problems.

25 I know we spent hours and days at Ontario Hydro, when
26 I there, defining the difference between parallel
27 generation and the other ones, so...

28 MR. ENGELBERG: And when -- just to finish my

1 question, when did the microFIT program begin?

2 MS. FRASER: October 1st, 2009.

3 MR. ENGELBERG: Now, I think we all heard in evidence
4 yesterday that despite the RESOP program, the industry up
5 to this time has had very little to go on by way of
6 experience with micro-embedded generation. Would you
7 accept that?

8 MS. FRASER: Which industry, sir?

9 MR. ENGELBERG: This industry that we are talking
10 about, the electricity micro-embedded generation idea.

11 MS. FRASER: In Ontario?

12 MR. ENGELBERG: In Ontario.

13 MS. FRASER: Correct.

14 MR. ENGELBERG: And because you have limited it to
15 Ontario, I take it you also heard the evidence yesterday
16 regarding why experience in some of the other jurisdictions
17 has not been very informative or helpful regarding the
18 Ontario experience?

19 MS. FRASER: What I heard yesterday was that Hydro One
20 said that they were aware of these things in other
21 jurisdictions. They said they did not consult with other
22 jurisdictions.

23 And I guess one of the key elements that Ontario
24 Sustainable Energy Association brought to the discussion
25 and debate with respect to this is that we brought a number
26 of international experts from around the world to come in
27 and help share that kind of information.

28 And I understand that there is differences between the

1 European distribution systems and the North American ones,
2 but we are seeing much higher levels of integration of
3 embedded generation, say, in California than we are here.

4 MR. ENGELBERG: But you heard, for example, yesterday
5 what was said about the New Zealand program?

6 MS. FRASER: I did.

7 MR. ENGELBERG: And do you recall what the differences
8 were between the New Zealand program, as an example, and
9 the situation in Ontario?

10 MS. FRASER: But -- I do, and --

11 MR. ENGELBERG: Can you tell us what those are?

12 MS. FRASER: Well, as my understanding was, it is the
13 utility was much more involved in helping customers do it,
14 and I think that's one of our biggest gaps here.

15 MR. ENGELBERG: Well, I think to be fair, the word
16 yesterday that the witness used was not "involvement". I
17 think what the witness said was that the utilities in New
18 Zealand had control over what people did, where they went,
19 where they built.

20 MS. FRASER: That could be an option for the program.
21 I think that's part of the new clean energy standard offer
22 program. There is limitations there that are based on
23 that, and --

24 MR. ENGELBERG: But you recognize that that's not part
25 of the microFIT program as it stands today?

26 MS. FRASER: No, because they are considered capacity
27 exempt, so why would you then determine where they should
28 go if they are capacity exempt?

1 MR. ENGELBERG: Well, the definition that was --

2 MS. FRASER: I can understand for FIT, but...

3 MR. ENGELBERG: The definition that was read to you a
4 few minutes ago by one of my friends regarding capacity
5 allocation exempt, perhaps I can repeat that and you can
6 tell me whether you agree or not, because my understanding
7 is that microFIT is not capacity allocation exempt. So I
8 am not sure why we are talking about CAE, in this
9 particular context.

10 "'Capacity allocation exempt..."

11 -- this is a definition from the Distribution System
12 Code --

13 "...small embedded generation facility' means an
14 embedded generation facility which is not a
15 micro-embedded generation facility and which has
16 a name-plate rated capacity of 250 kilowatts or
17 less..."

18 And it goes on from there. But you agree with me the
19 microFIT program is not part of capacity allocation exempt?

20 MS. FRASER: Well, you asked me when the microFIT
21 program started. It began after that was written. So I
22 think that we have now -- and it certainly was very clear
23 in the Hydro One application that somehow this word "micro"
24 stuck in front of something changes everything, and I am
25 not sure that that's the case.

26 MR. ENGELBERG: But it's the definition of the
27 Distribution System Code --

28 MS. FRASER: From 2008.

1 MR. ENGELBERG: -- that says capacity allocation
2 exempt means an embedded generation facility which is not a
3 micro-embedded generation facility.

4 MS. FRASER: Correct, but that was -- the microFIT
5 program came after that.

6 MR. ENGELBERG: Correct.

7 MS. FRASER: And I think it was more the name than it
8 was responding to definitions in the code.

9 MR. ENGELBERG: All right. So are you saying that the
10 microFIT program either is or should be capacity allocation
11 exempt and not subject to any limitation on the basis of
12 constraints? Would you like to see that change to the
13 microFIT program?

14 MS. FRASER: Yes.

15 MS. BRANT: Madam Chair, I believe the question has
16 been answered.

17 MR. ENGELBERG: I believe it has, too. Is that why,
18 Ms. Fraser, that you are suggesting that Hydro One should
19 be applying to the Ontario Energy Board for a rate rider or
20 rate increases to build its system out, strengthen its
21 system --

22 MS. FRASER: Absolutely.

23 MR. ENGELBERG: -- so that microFIT generators can
24 connect at will?

25 MS. FRASER: Absolutely, absolutely.

26 MR. ENGELBERG: But you would agree with me that
27 that's not part of the microFIT program as it stands now?

28 MS. FRASER: It's not part of the microFIT program,

1 but it's part of the Green Energy Act, the obligation to
2 connect, move forward. And it is my understanding, in
3 terms of what -- the green energy plan, that distribution
4 companies would do is essentially that.

5 I think that's one of the things that's missing from
6 the application, is you have no -- you accept status quo
7 for the system, and I don't see we're moving to change
8 things.

9 MR. ENGELBERG: Would this be toward a view toward
10 enabling any microFIT generation proponent to be able to
11 connect without having any concerns as to where or how?

12 MS. FRASER: MicroFIT, yes, absolutely. I think that
13 that should be -- the system should be able to do that.
14 Adding smarts to the system should help in doing that.

15 Yes, there may be opportunities to then build some of
16 that stuff into the demand response program, as well. One
17 of our problems that we have is that it's all silos; all of
18 these programs are silos, and we are not taking advantage
19 of the ability to integrate.

20 OSEA has made that point numerous times, that it's not
21 a smart grid over here, it's not a green grid over there,
22 and it's not a grid without stray voltage down here. It's
23 all one grid, and we have to get it into the 21st century.

24 MR. ENGELBERG: If your suggestion were followed,
25 would the result then be that none of the microFIT
26 applicants to any LDC or to any area of the province would
27 ever have to concern themselves with receiving a "no"
28 answer from the LDC?

1 MS. FRASER: Correct. It would be a matter -- it
2 would be a -- the issue would be the issue of time.

3 MR. ENGELBERG: And then I take it the LDCs could take
4 away the warning on the form C that was brought to our
5 attention yesterday, that instructs them not to spend money
6 until they have an offer to connect?

7 MS. FRASER: I qualified my previous answer with: It
8 would be a matter of time.

9 Now, I don't pretend that we are going to go out
10 tomorrow and improve, essentially, a distribution system,
11 particularly Hydro One's distribution system, the radial
12 distribution system, so on and so forth, that we have had,
13 you know -- that needs a lot of help, that it was starved
14 for finances for years, and turn that around.

15 So I would not -- I would still keep that thing in,
16 because the equipment that somebody could put in today is
17 going to be quite a bit less efficient than the stuff they
18 are going to be able to put in two years from now. So why
19 have it sitting there not earning any rate of return?

20 But the basic principle of moving forward and enabling
21 every Ontarian, every ratepayer of Ontario to be a
22 generator if they want to be, yes, that is exactly the
23 basis of the Green Energy Act Alliance's work.

24 MR. ENGELBERG: Now, yesterday we heard some evidence
25 regarding the challenges that Hydro One is facing, and you
26 stated a few minutes ago in response to a question from
27 someone else that you don't understand why Hydro One has
28 not been able to meet the strict fixed timelines in section

1 6.2.6 and 6.2.7.

2 MS. FRASER: I think what I said is that I didn't see
3 the evidence of -- put forward of the specifics, especially
4 with respect to 6.2.7.

5 And I think what we heard this morning was something
6 very, very different than what we heard yesterday in terms
7 of the interpretation of that, and I think that until we
8 have some root cause data that shows us that, I -- all I
9 know is what I get from, you know, some -- a guy that has
10 invested his whole family's savings into a project, and is
11 stuck without being able to move forward, so...

12 MR. ENGELBERG: Well, what I heard yesterday and I
13 heard it in the morning and again in the afternoon from all
14 three of the witnesses was, among other things, an
15 explanation of the order in which things must be done in
16 the field, and that simply throwing more people at a
17 problem doesn't do anything, because one event happens
18 after the other. Each one is dependent on the one before.
19 Things are done sequentially.

20 And I think that was explained at great length; do you
21 have any difficulty with that explanation?

22 MS. FRASER: I have no difficulty with that, but when
23 I hear that the electrical safety inspector is there three
24 times and the Hydro One person doesn't show up, then I --
25 that gives me heart failure, because my expectations are
26 much higher of Hydro One than that.

27 MR. ENGELBERG: Now, you mentioned the experience that
28 Hydro One had before the RESOP program.

1 Are you aware of how many micro-embedded generators
2 were being connected to the Hydro One distribution system
3 before RESOP and during RESOP?

4 MS. FRASER: Before RESOP?

5 MR. ENGELBERG: Well, let's say during RESOP.

6 MS. FRASER: Not very many.

7 MR. ENGELBERG: I think --

8 MS. FRASER: Which is exactly why the Green Energy Act
9 Alliance wanted to move away from RESOP and get to
10 something that was more -- and we, OSEA, published those
11 reports to explain why we wanted to get to something that
12 was much more friendly to embedded consumers.

13 MR. ENGELBERG: I believe Mr. D'Arcey said yesterday
14 in his evidence that the number was 100 or less than 100;
15 does that sound right to you? RESOP connections?

16 MS. FRASER: In total?

17 MR. ENGELBERG: Yes, at Hydro One, for micro-embedded
18 generation.

19 MS. FRASER: Okay. The only access to numbers I have
20 are province-wide numbers, so I don't know whether they are
21 Hydro One numbers or -- they obviously include Hydro One
22 numbers, and basically, January 2008 there were 262
23 contracts executed, representing about 1,000 megawatts.

24 MR. ENGELBERG: How many of those were micro-embedded?

25 MS. FRASER: I don't think there were very many.

26 MR. ENGELBERG: And that was all through the province
27 of Ontario; is that correct?

28 MS. FRASER: That's correct. Correct.

1 MR. ENGELBERG: So I guess what I am trying to get
2 at -- and I think you are agreeing -- is that there was
3 very little experience before the microFIT program began
4 with connecting micro-embedded generation in Ontario.

5 MS. FRASER: That's right. The RESOP program
6 conditions and even net metering just were not conducive to
7 igniting the market to do what it could do.

8 MR. ENGELBERG: Then I guess I would ask in that
9 regard do you have any reason to dispute what I think we
10 heard the Hydro One witnesses say yesterday, that Hydro One
11 has processed 17,000 microFIT applications to date? Do you
12 have any reason to disagree with that number?

13 MS. FRASER: No, now that we have those numbers, I
14 think those numbers should become very, very transparent,
15 as opposed to having to go through transcript undertakings
16 to get them.

17 But I totally agree, and I know it is huge, but from
18 my point of view, the number of applications is one thing;
19 the connections and the generation of power is the
20 paramount thing.

21 MR. ENGELBERG: Thank you. I would just like a moment
22 to see if I have any other questions.

23 Those are all my questions.

24 MS. CHAPLIN: Thank you, Mr. Engelberg.

25 Ms. Brant, do you have any re-examination?

26 **RE-EXAMINATION BY MR. BRANT:**

27 MS. BRANT: I do I have one question.

28 Marion, it's my understanding that the OPA and the

1 Ministry of Energy, when it put together the microFIT
2 program, that it intended that all of those applicants
3 would be connected; is that correct?

4 MS. FRASER: That was my understanding. Although I
5 was actually surprised yesterday when the Hydro One
6 witnesses indicated, I think about seven times, that the
7 estimate was 125,000 applications over five years, because
8 I sat in this room about two months ago when the Ontario
9 Power Authority said they had no forecasts of what they
10 expected.

11 So perhaps they just didn't have any formal forecasts.
12 I think -- again, I think some of the other witnesses, that
13 what they said this morning was that those numbers were
14 probably light, and I would also point out that the monthly
15 volume in total -- and again, we just have the total
16 numbers -- has definitely fallen off from the first year of
17 microFIT to in the first eight months of this year, or the
18 first 10 months of the second year of the program.

19 MS. BRANT: Thank you.

20 MS. CHAPLIN: Thank you.

21 The Board has no questions, so thank you. The panel
22 is excused with the Board's thanks.

23 So I believe that brings us to the end of our
24 evidence. Mr. Engelberg, would you like a break before you
25 do your argument-in-chief?

26 MR. ENGELBERG: I would appreciate that, Madam Chair.

27 MS. CHAPLIN: And perhaps just so I can ascertain
28 now -- or perhaps the parties could take also the break to

1 work out amongst themselves an order of argument. I am not
2 sure if some parties have some travel plans that might --
3 we can try to assist to some extent.

4 How long would you like, Mr. Engelberg?

5 MR. ENGELBERG: I would need no more than 20 minutes.

6 MS. CHAPLIN: Okay. We will break now for 20 minutes.
7 Thank you.

8 --- Recess taken at 1:26 p.m.

9 --- On resuming at 1:56 p.m.

10 MS. CHAPLIN: Mr. Engelberg, are you ready to go?

11 MR. ENGELBERG: Yes, I am.

12 MS. CHAPLIN: Whenever you are ready.

13 **SUBMISSIONS BY MR. ENGELBERG:**

14 MR. ENGELBERG: Thank you, Madam Chair and Ms. Hare.

15 Hydro One respectfully submits that its prefiled
16 evidence and the oral evidence given yesterday by its three
17 witnesses, as well as some of the evidence given today by
18 intervenors, have made a number of points amply clear.

19 First of all, Hydro One has made non-stop efforts
20 since 2010 to comply with the requirements of section 6.2.6
21 and 6.2.7 of the Distribution System Code by meeting the
22 short, rigid timelines found in those sections, and,
23 despite all its efforts, the evidence has shown that Hydro
24 One has not been able to comply with the strict timelines
25 in those sections for a number of reasons that were
26 explored at great length in cross-examination.

27 First, the uptake for the province's microFIT program
28 has been in numbers never been seen, thereby creating

1 challenges never before seen. Stakeholders' initial
2 estimates of 125,000 applications over five years, 25,000
3 of which were estimated to be distributed throughout Hydro
4 One's service territory, were completely wrong.

5 The numbers so far have been greater than 22,000
6 received -- 17,000 received by the OPA -- excuse me, 22,000
7 received by the OPA, 17,000 of them within the Hydro One's
8 service territory, with another 5,000 waiting at the OPA to
9 go to Hydro One's service territory. And this is in a
10 period of less than two years, not the five-year period
11 originally estimated.

12 As Ms. Kingsley stated, 668 applications were received
13 last week alone. That's more than 120 applications every
14 business day, 15 applications every hour, four applications
15 every minute of the working day.

16 Hydro One submits that no one, including distributors,
17 the OPA, the Board or the government, could have
18 anticipated the volume of applications or their irregular
19 arrival, or the peaks and valleys or their concentration in
20 limited portions of the province with limited capacity.
21 There was very little province-wide distribution of these
22 numbers.

23 It was also stated in evidence that the industry that
24 is the subject matter of the microFIT applications is an
25 immature industry in which the learning curve and the
26 experience curve are steep, particularly with regard to the
27 effects of thousands of proposed connections in limited
28 areas to limited assets.

1 The map of Ontario that was referred to yesterday in
2 page 14 of Hydro One's prefiled evidence showed that the
3 concentration of applications was limited to a few areas of
4 Hydro One's vast service territory. And in a question
5 answered by Mr. Hubert and Mr. D'Arcey concerning the
6 experience in other countries, the evidence was that the
7 experience of other jurisdictions has unfortunately been of
8 very little help in informing plans for Ontario because of
9 the different situations in the other jurisdictions,
10 including the total lack of control on the part of
11 distributors in the Ontario landscape.

12 The result of that is that there is nothing in the
13 criteria for the microFIT program to focus uptake on areas
14 of the province where connections are non-problematic,
15 where assets and capacity are plentiful, and the result is
16 a voluminous concentration of applications in relatively
17 small areas of the province where connections are
18 problematic because of system constraints and
19 unavailability of sufficient assets.

20 I submit that the evidence also showed that Hydro One
21 and its staff at all times bore in mind the importance of
22 renewable distributed generation and the desirability and
23 importance of saying "yes" rather than "no" the microFIT
24 proponents.

25 The evidence showed that Hydro One actually went back
26 to people to whom it looked like a refusal would be
27 forthcoming to see if they could be given a positive answer
28 later on as a result of events that had taken place since

1 the initial rejection.

2 Numerous questions and numerous answers showed that
3 Hydro One's efforts to comply with the DSC never stopped
4 and they never remained static. The evidence showed that
5 Hydro One's efforts increased all the time as the
6 unprecedented volume made itself known. Hydro One's
7 strategies broadened all the time.

8 And, throughout this time period, Hydro One increased
9 its tools and developed more efficient and creative methods
10 to address workload and new problems that came to light,
11 such that Hydro One now believes that its exemption request
12 for the indicated time period is borne out of a realistic
13 appraisal of the situation, barring unforeseen
14 circumstances.

15 In that regard, I submit that the evidence was clear
16 that the situation we have is not a situation in which the
17 answer to the problem is to throw more money at it or to go
18 out and hire even more people than are already in what was
19 explained to be Hydro One's flexibly-sized work staff that
20 can go up and down as needed, as was explained yesterday by
21 Mr. D'Arcey and Ms. Kingsley.

22 Rather, the evidence was that resourcing is not the
23 problem. The problem is the list of tasks that need to be
24 done in sequential order, many of which are in the field
25 and all of which are dependent on the ones before.

26 It is this situation that creates challenges in
27 meeting the short, strict timelines in the two sections of
28 the DSC. Even before Hydro One made this exemption

1 application to the Board, Hydro One notified the Board of
2 its non-compliance last year and the serious challenges
3 with which it was struggling in all of its attempts to
4 comply with the short timelines.

5 Cross-examination also highlighted that the regulatory
6 process for assessing and connecting load customers, who
7 are also valued and important customers of Hydro One, and
8 of every LDC and who also compete for the resources of
9 LDCs, is vastly different from the regulatory process for
10 assessing and connecting microFIT customers, and is likely
11 a more practical process than the scheme for microFIT
12 generators.

13 Hydro One further submits that allegations by some
14 intervenors that Hydro One showed a lack of concern and
15 disregard for generation proponents and for renewable
16 generation are unfair. Although Hydro One may not always
17 have responded as promptly as it would have liked, the
18 evidence showed, in Hydro One's submission, that the
19 efforts made by Hydro One in the face of thousands and
20 thousands of microFIT applications in limited areas of the
21 province have been unprecedented, as have Hydro One's
22 accomplishments to date in connecting thousands and
23 thousands of microFIT applicants.

24 Hydro One recognizes that it is unfortunate that a
25 number of generation proponents undertook considerable
26 financial risk in spending monies or committing to spending
27 monies not after receiving an offer to connect from Hydro
28 One, but, rather, before receiving an offer to connect

1 which might never be forthcoming because of system
2 constraints or other valid reasons.

3 We all recall that yesterday Mr. McLellan provided the
4 hearing with Hydro One form C, which showed that those
5 risks were taken by some generation proponents despite the
6 fact that they had no offer to connect and despite the fact
7 that Hydro One warned proponents on the first page of the
8 form not to incur major expenses prior to Hydro One's
9 saying "yes" to the proposed connection.

10 Therefore, it is Hydro One's respectful submission --
11 let me backtrack a minute here. I would add in that
12 regard, regarding the risks, that this morning Mr. Ray
13 acknowledged on behalf of Essex that he was aware of the
14 risks and that his company, for one, knowingly made its
15 decision to spend money despite the fact that there were no
16 offers to connect.

17 Mr. Hammerbacher also stated, I believe, his views as
18 to how unconditional he viewed the microFIT program to be
19 when it was announced. In my submission, he left us with
20 the impression that there were no limits and there were to
21 be no limits on microFIT connections, and his industry
22 planned accordingly.

23 And in that regard, I would say that Ms. Fraser stated
24 just before the break that it was her desire and perhaps
25 her understanding that that was also to be the nature of
26 the microFIT program, that these microFIT facilities were
27 so small that they could be located anywhere, anywhere in
28 the province, connected to any assets, that there would be

1 no problems, and despite all the warnings that had been
2 given to proponents that connection would simply be a
3 matter of time.

4 Therefore it is Hydro One's respectful submission that
5 it has provided valid, constructive and transparent reasons
6 as to why it should be granted the exemption from the
7 strict, short timelines in section 6.2.6 and 6.2.7 for the
8 period requested, namely six months from the date of the
9 Board's decision in this matter. Hydro One has stated on
10 the record its willingness to report to the Board during
11 that period of time and to provide the Board, if requested,
12 with a compliance plan. And Hydro One further undertakes
13 to inform the Board if there are developments during the
14 period of any exemption which would have any significant
15 effect on Hydro One's plan.

16 Some suggestions have been made in the questioning of
17 witnesses as to whether other time periods might work, if
18 the Board were to see it fit to grant the exemptions to
19 Hydro One as requested. Hydro One does not believe that
20 this is the time for the Board to set additional or
21 different fixed, rigid timelines.

22 As Mr. Hubert said yesterday, at page 69, line 28 of
23 the transcript, he stated Hydro One's concern that setting
24 new timelines would not be of help in resolving the
25 problem, especially during the six-month period for which
26 the exemption is requested, until Hydro One can deal with
27 the backlog, redouble its efforts to solve the problem.

28 As I stated before, Hydro One is willing to put a

1 compliance plan in place with the Board, and invites the
2 Board to do regular monitoring, and for Hydro One to do
3 regular reporting so that the Board can be aware at all
4 times of the situation and the progress made by Hydro One
5 in addressing the issues that are the subject matter of
6 this hearing.

7 And those are Hydro One's submissions.

8 MS. CHAPLIN: Thank you. We have no questions for you
9 at this time.

10 Ms. Sebalj, do we have an order of submissions?

11 MS. SEBALJ: I believe that we have agreement that Mr.
12 Carten will be next -- sorry, Mr. Stephenson will be next,
13 I apologize, followed by Mr. Carten, followed by Mr. Myers,
14 Ms. Brant, and then myself.

15 MS. CHAPLIN: Are you ready to go, Mr. Stephenson?

16 **SUBMISSIONS BY MR. STEPHENSON:**

17 MR. STEPHENSON: I am. Thank you.

18 The PW supports Hydro One's application in this
19 matter, and submits that the exemption should be granted on
20 the terms proposed by Hydro One.

21 Just to focus the task before the Board, if I could,
22 at least from our perspective, in my submission there are
23 essentially two questions that the Board should ask itself
24 and answer in resolving this matter.

25 The first question is: Has Hydro One demonstrated to
26 you that it has made reasonable efforts to comply with the
27 provisions of the Distribution System Code?

28 And part of that analysis, I would urge upon you, is

1 to recognize that the provisions in question of the DSC,
2 frankly, were not immaculately conceived. These provisions
3 were developed at a point in time where knowledge of the
4 circumstances on the ground was imperfect. They were
5 conceived in good faith; the best minds available here at
6 Yonge and Eglinton were put to the task, and that was the
7 best solution that was available at the time.

8 But we know that the DSC has been revised in a variety
9 of ways at different times as additional information has
10 arisen, and that better solutions have presented
11 themselves.

12 And so I don't think it is necessarily fair or
13 appropriate to assume that the provisions of the DSC are
14 pristine, precise, accurate, and the best that could
15 possibly be done in all circumstances. They are simply
16 numbers that the Board came to as the best available
17 solution at the time, given the information it had and the
18 limited experience it had.

19 So when -- to my mind, when assessing the efforts made
20 by Hydro One and the reasonableness of the efforts made by
21 Hydro One, you are entitled and it is appropriate to
22 consider not only the circumstances that Hydro One faced in
23 terms of its service territory, in terms of the numbers of
24 applications, in terms of the fact that this was a new
25 experience for it and other LDCs, but also the fact that
26 these measures are just that; they are measures, they are
27 numbers. And so they may be good numbers. They may not be
28 good numbers. There may be better numbers yet to come.

1 Over time, these numbers may be revised. The Board might
2 see fit to do that, in whole or in part, but they are just
3 numbers.

4 So in my submission, on the first question, I think
5 it's clear that Hydro One has demonstrated to you that it
6 has, in fact, made serious, bona fide, reasonable efforts
7 to comply, and that its lack of compliance is not due to
8 the want of good-faith effort and the intention and desire
9 to comply. This is not a case where they have been
10 delinquent in their effort.

11 So that's the first question, in my submission.

12 The second question, in my submission, is: In view of
13 the effort that has been made and the fact that there is
14 clearly non-compliance with these metrics, what do we do
15 about it?

16 And this is, in my view, essentially an assessment of
17 the costs and benefits, so to speak, of two alternatives;
18 that is, granting and exemption on whatever terms you see
19 fit, or not granting an exemption. And let's examine those
20 two scenarios separately.

21 We all know that the objective of the exercise isn't
22 -- I mean, I suppose there are two objectives of the
23 exercise. There is a technical objective and a practical
24 objective. The technical objective that Hydro One wants to
25 achieve for a variety of perfectly valid reasons is to keep
26 itself in compliance. I mean, regulatory compliance is not
27 something to be trifled with. It's something Mr. Hubert
28 spends his days doing; that's one of his tasks in life.

1 And so that's a very valid thing for Hydro One to be
2 concerned about.

3 But of course, the practical consequence that we are
4 seeking to achieve here is to get the best possible
5 performance, not only to have compliance, but, in a perfect
6 world, to have better than compliance, to exceed the
7 requirements. That's what's really important here.

8 And so the question is: Would denying the application
9 make any difference to achieving the practical objective of
10 the exercise? We know what it would do to the technical
11 objective. Of course Hydro One would remain out of
12 compliance. That would be clear.

13 But from a practical -- from a practical objective,
14 what difference would it make? And I think Hydro One was
15 loud and clear that it actually wouldn't make any
16 difference, in the sense of improving its response times
17 relative to granting the exemption.

18 Hydro One says, We are doing essentially what we can
19 do in terms of process improvements, in terms of resource
20 allocation, in terms of acquiring and deploying skills,
21 learning from past experience, all of the kinds of things
22 one would expect them to be doing.

23 There is no magic wand that the Board can wave by
24 denying the exemption that would result in Hydro One
25 rolling out a set of initiatives that would, overnight or
26 next week or next month, put it into compliance with the
27 metrics it's not in compliance with today.

28 Hydro One says that it is improving as these

1 initiatives have rolled out, and I think there is some
2 evidence to suggest that the turnaround rate is better. We
3 have heard about that. Particularly certain categories,
4 there has been dramatic improvement to the point where
5 Hydro One is now in compliance with certain categories in a
6 very high percentage of occasions.

7 But to my mind, denying -- if the reason for the
8 denial of the application is to incent superior performance
9 or improved performance as greatly as possible, it will not
10 achieve that objective. That is inconsistent with the
11 evidence. So, in my submission, that's not the reason to
12 take that route.

13 Let's look at the other side of the coin, which is:
14 What are the consequences of granting an exemption on
15 whatever terms the Board sees to be fit?

16 Well, on the one hand, it will put Hydro One back into
17 compliance, presumably, and that's technical compliance.
18 And that's of no small moment, for a variety of reasons,
19 and I think that Hydro One legitimately is concerned that
20 it wants to stay in compliance and shouldn't have a concern
21 hanging over its head, while it sorts these things out,
22 that somehow there could be consequences arising from this
23 non-compliance.

24 That being said, it was an issue I raised in
25 examination of the panel, which is it is a valid concern
26 for the Board that by granting the exemption, that somehow
27 either Hydro One will perceive or somebody will perceive or
28 the market will perceive that Hydro One's feet are no

1 longer being held to the fire, that somehow they are
2 getting a holiday from doing this work.

3 And I think Hydro One, I think, sincerely indicated to
4 you that that is absolutely no part of their plan, and, in
5 my submission, you can fairly take that from the evidence.
6 Frankly, I don't think that proposition was seriously
7 challenged in the course of the hearing.

8 So on the other hand, Well, what are the consequences
9 out in the marketplace? What are the consequences to
10 people in the queue, et cetera? Well, in my submission,
11 assuming that Hydro One in fact does what it has pledged to
12 you to do, as a practical matter, there is no consequence
13 out there in the marketplace. They are going to continue
14 to do what they are doing and they are going to continue to
15 improve, and hopefully they will achieve compliance.
16 People in the queue will be treated as they have been
17 treated and will hopefully continue to be treated in an
18 improved fashion.

19 There may be some perceptions in the market. I think,
20 frankly, at the end of the day, that's what we are really
21 talking at here in terms of the adverse effects of
22 potentially granting an exemption. It's that somehow some
23 people in the market will perceive certain things to be so,
24 even if they are not so.

25 It seems to me, at the end of the day, that's a
26 communications exercise that has to be -- to address
27 potentially faulty perceptions that may arise by virtue of
28 the Board's decision, and I urge you, in crafting your

1 reasons, to send a message out to Hydro One, on the one
2 hand, and to the market on the other, about the Board's
3 expectations in terms of how things will roll out to ensure
4 that there is good information in the market and that
5 perceptions are not false perceptions.

6 The second thing that I think the Board can and should
7 do is to think about terms as a means of ensuring that,
8 number one, Hydro One's feet continue to be held to the
9 fire, and, number two, that they are perceived to be
10 continued to be held to the fire.

11 And I accept that, number one, Hydro One has made some
12 suggestions to you regarding the kinds of terms that it
13 considers to be appropriate. Number one, there are the
14 terms that it suggests should be in place regarding how --
15 the rules that should be applied, the metrics that should
16 be applied. For the reasons expressed by the witnesses, I
17 submit to you those are appropriate.

18 But, secondly, in terms of the terms regarding
19 reporting, for example, and compliance plans and so forth,
20 I recommend and support those terms to you for the reasons
21 essentially expressed to you by Mr. Engelberg.

22 There is, I think, some danger of being too
23 proscriptive in terms of the terms. The purpose of this
24 exercise is to give Hydro One the opportunity to get itself
25 back into compliance and/or to come back to you and tell
26 you how this -- I think it will be some recommendations to
27 you regarding the potential that the DSC, there are certain
28 aspects of it that simply have to be amended in certain

1 circumstances. That may be what happens six months from
2 now. Who knows? But that might be the outcome of it.

3 But, in my submission, the exemption should be
4 granted. The terms along the lines of reporting, along the
5 lines of a compliance plan, are the appropriate means of
6 providing the assurance that the Board and the market needs
7 to know that Hydro One continue to take these obligations
8 seriously and will back up essentially the pledge it made
9 to you about its intentions for its conduct during the
10 period of the exemption.

11 Subject to any questions, those are my submissions.
12 Thank you very much.

13 MS. CHAPLIN: Thank you, Mr. Stephenson. Ms. Hare has
14 a question.

15 MS. HARE: Mr. Stephenson, I don't expect you to give
16 me an answer off the top of your head, but you made a
17 statement that there is evidence that there has been a
18 dramatic improvement in certain categories in a very high
19 percentage of categories.

20 If you could provide a reference to support that
21 statement, I would find that helpful.

22 MR. STEPHENSON: Yes, I can. I am trying to recall.
23 It was a Hydro One witness, and it was regarding how the
24 turnaround time at the BCC had drastically improved, and
25 they were now getting turned around for a certain
26 category -- I believe it's the non-site visit ones -- were
27 getting turned around in 48 hours at the BCC now, and that
28 the handle time, the approval time, approval, I guess,

1 slash rejection time at the first stage was now four days,
2 if I recollect, which was a significant drop from -- I have
3 forgotten what the average was prior to that. I think it
4 was in the -- it was obviously over 15 in some cases, but
5 now the average is down to four days, which is obviously
6 substantially below the 15-day limit. And I assume there
7 are some outliers, but if the average is down to four, I
8 assume that there is a very high degree of compliance, at
9 least in that category of cases.

10 MS. SEBALJ: If it helps I believe the transcript
11 reference is on -- and you can confirm for me, Mr.
12 Stephenson -- it's page 60 and 61, and I believe that's the
13 passage where Ms. Kingsley gave the statistics and the
14 change in statistics over time.

15 MR. STEPHENSON: That sounds right to me.

16 MS. CHAPLIN: Thank you, Mr. Stephenson.

17 Mr. Carten?

18 **SUBMISSIONS BY MR. CARTEN:**

19 MR. CARTEN: Thank you again.

20 I think we have a different perspective on this than
21 many of the intervenors here, or the parties to it. And I
22 wanted to give the Board the benefit of that perspective,
23 and I think the challenge, this is a real chestnut for the
24 Board, because there are some difficult administrative kind
25 of issues, but there is also a bigger picture question.

26 How the Board responds and how it deals with this
27 application will have a profound effect on the perception
28 of the world on the province. I mean, what we have here,

1 the facts, is the Premier of this province went to the
2 world, went to the solar industry and said: Help us
3 rebuild the Ontario economy. They used the Green Energy
4 Act and program as part of an industrial strategy. They
5 built into the program a domestic content, and the message
6 the Premier gave to companies such as Mr. Hammerbacher's,
7 such as mine, such as many of the intervenors' with us,
8 was: If you build here, you will have demand. It will
9 come from this program. There will be demand for your
10 product.

11 Like everyone, as the witnesses said this morning, we
12 made certain assumptions. We assumed that the rules would
13 be followed. We assumed that the utilities here would
14 follow the standards that have been applied around the
15 world.

16 Last year, there were 17,000 megawatts installed in
17 solar. This year there will be 22,000 megawatts installed.
18 There is lots of experience out there with solar and
19 connecting to the grid in all sorts of applications.

20 So we assumed that the province, its institutions,
21 Hydro One being one, its other municipally-owned
22 institutions, would follow those standards. That's a very
23 reasonable assumption.

24 Most of them have. The one that has not is the Crown-
25 owned utility, the largest monopoly in the province. It
26 hasn't followed those standards. Moreover, it hasn't
27 prepared itself to meet the demand. The blind man on the
28 galloping horse could have seen the demand coming in the

1 microFIT market.

2 Had they taken the time to go and see what had
3 happened in Germany, what had happened in Spain, what had
4 happened in Italy, what had happened in the United States,
5 they would have seen the demand coming.

6 What you saw today from the evidence is they don't
7 have a demand planning process at all. The only example
8 that was shown here was New Zealand. They took a rule
9 designed for safety, turned it upside down misinterpreted
10 it, and basically excluded 25 to 30 percent of the
11 projects.

12 That's why these people, these individual project
13 owners, were here, because they were denied that
14 application.

15 As I said, they also didn't put the resources behind
16 the program they needed to. That's an indictment of
17 management. That's an indictment of the board of directors
18 of Hydro One. Why didn't they do that? Why didn't they
19 have the demand planning processes in place?

20 So that's the facts today. If the Board simply allows
21 the application, what does the world see? The government
22 comes out, pulls you in, its own utility comes back and
23 says: We can't comply.

24 They didn't say that three years ago; they didn't say
25 that two years ago; they didn't say it even a year ago.
26 Less than six months ago, they came out and said: There is
27 the demand. It's gone.

28 So what do you say to them, what do you say to the

1 government, to answer the positions of companies like ours,
2 who invested on certain reasonable assumptions which they
3 did not follow? That's the chestnut.

4 There has been a lot of what I would perceive to be
5 Hydro One bashing in the past couple of days. I guess
6 that's a sport here, but the -- and I think you have a
7 terrible dilemma here. What I would like to say is that
8 the -- I have a roadmap. I some thoughts in terms of what
9 you might be able to do.

10 Approving the request as filed doesn't solve any of
11 the problems that are in the market. It doesn't solve this
12 issue. It doesn't deal with this issue of principle. It
13 means business as usual with Hydro One.

14 Denying it seems to mean business as usual with Hydro
15 One. They have no plan B. What do you do if the Board
16 says no? So the hypothesis is they came in here expecting
17 the board to rubber-stamp it.

18 It seems to me that somehow the Board must come up
19 with something that will, in fact, force change, make
20 change happen, so that in fact, the institutions of this
21 province can help to fulfill the promises that the
22 government of this province has made to industry.

23 With that in mind, I have a few suggestions, which
24 would, I guess, recommend -- amount to my submission.

25 One is I think there is a rigidity in the approval
26 process, and I think that needs to be addressed with more
27 flex, give Hydro One more flex.

28 I don't believe there is enough resources applied to

1 it. Once you have that flex in the system, if you put more
2 people on the job, more applications will get approved. I
3 think it would be good if the Board would recommend or
4 direct -- I am not sure what your authority is -- but
5 recommend or direct to the board of Hydro One and its CEO
6 that they at least bring the demand planning process in
7 Hydro One into the 21st century, and not just depend on
8 what this week's mail drop is.

9 I believe you need to set up a mechanism for approval
10 of the projects and deferral of connection, to allow for
11 upgrades where they need to be done.

12 There shouldn't be an incentive to turn down the
13 project. There should be some mechanism to say: This
14 project is okay, but we have to do voltage upgrade. We
15 have voltage stabilization, and we have to do this, so we
16 are going to put you in a holding pattern until that gets
17 done, and then have some mechanism as to what's agreeable
18 with the parties.

19 I would recommend that you -- or the Board recommend
20 that the senior management and the department and industry
21 come up with a mechanism to fund some of the upgrades that
22 are required, to have the project developers fund some of
23 the upgrades to the system that are required to make it
24 work.

25 I have been pounding away on the 7 percent rule, and
26 our sense on this is the 7 percent rule is a useful
27 throttle, if you will, on the amount of demand, and is
28 being driven as much by costs associated with upgrading the

1 lines as it is with the safety issue. But I know I am not
2 allowed to speak to that, so I won't get into it.

3 But there is an issue with funding these upgrades,
4 and, frankly, it is our view that the industry should be
5 funding it. The program is rich enough as it is without
6 having the rate base to pay more.

7 I would recommend that when you do this, you direct
8 senior management to go and come back here within two weeks
9 with a solution. To put it in an open-ended process is not
10 going to work.

11 In terms of addressing the big issue - I will put this
12 on the table and you can reject with it or deal with it as
13 you like - my recommendation would be that the Board
14 recommend that Hydro One follow FERC -- in fact follow the
15 FERC proposals, except where there is a compelling reason
16 not to. And because of the nature of the grid that Hydro
17 One faces, there may be situations where even following the
18 FERC rules would be inappropriate, but basically would say
19 where there is potential for an island being created that
20 would materially and adversely affect the safety, then they
21 should be allowed to back off the general rule.

22 Lastly, I'd encourage the Board to bear in mind the
23 pace, the urgency. This has been a program that had a lot
24 of enthusiasm behind it and it has crashed, and it has
25 crashed -- and Hydro One is getting the hit for it because
26 it's crashed in their backyard.

27 And, sure, there are a lot of problems, but the real
28 issue is: How do we get engagement of management? And I

1 would recommend to the Board or submit to the Board that
2 they should focus on that. How do we get engagement
3 between senior management, the industry and the government
4 to make solutions?

5 And that's the essence of my submission.

6 MS. CHAPLIN: Thank you.

7 MS. HARE: I just want to clarify one point that you
8 made, which was with respect to funding of the upgrade. So
9 did I understand you correctly you are suggesting the
10 project developers would fund those upgrades?

11 MR. CARTEN: Yes, in much the same way as is done for
12 the FIT projects. We have made some suggestions to the
13 Ministry on how that could be done, largely along the lines
14 of a no-fault insurance, so that each developer would pay a
15 certain amount of money into the fund and that would be
16 used to fund upgrades.

17 MS. HARE: And then it is pooled?

18 MR. CARTEN: It's pooled, exactly.

19 MS. CHAPLIN: Thank you, Mr. Carten. Ms. Brant --
20 sorry, Mr. Myers. I do have you next on my list. I
21 apologize.

22 **SUBMISSIONS BY MR. MYERS:**

23 MR. MYERS: Thank you. It is CanSIA's submission that
24 the exemption requests should be denied, because the
25 exemptions and the effects of those exemptions are not in
26 the public interest. However, we do recognize that simply
27 denying the exemption requests will not go very far in
28 resolving the underlying issues related to connection

1 delays and connection refusals, which are causing and are
2 expected to continue to cause significant hardship for the
3 solar industry in Ontario.

4 As such, it will be CanSIA's submission that the Board
5 should endorse a multi-pronged approach to bringing Hydro
6 One into compliance so as to help bring about greater
7 certainty to the marketplace.

8 It will also be CanSIA's submission that as part of
9 this approach, the Board should establish a forum that will
10 allow for the consideration of the technical issues related
11 to Hydro One's use of the technical screening tool which
12 were outside the scope of this proceeding.

13 CanSIA is a national trade association that represents
14 nearly 700 solar energy companies, the majority of which do
15 business in Ontario. Our member companies include
16 manufacturers and distributors of solar products,
17 installers of solar energy systems, and project developers.
18 Many of these companies are actively engaged in serving the
19 needs of developers and would-be developers of microFIT
20 projects.

21 The intention of the microFIT program, as we have
22 heard, was to encourage development of micro-scale
23 projects, which are projects of 10 kilowatts or less in
24 size, by owners who are typically homeowners, farm owners,
25 small business owners, and institutions such as schools and
26 places of worship. These are small projects.

27 According to the most recent biweekly report from the
28 OPA's website, 99 percent of all microFIT projects are

1 solar projects. As such, the timelines for connecting
2 micro-embedded generation in Ontario are of particular
3 interest to CanSIA's members.

4 Under microFIT, up until December 8th, 2010, a person
5 could apply to the OPA, and, if their project met the OPA's
6 eligibility requirements, then the OPA would issue a
7 conditional offer of a microFIT contract. With the
8 conditional offer in hand, the applicant would then submit
9 their connection request to Hydro One, or whatever other
10 distribution company might apply.

11 Under section 6.2.5 of the code, a distributor is
12 required -- a distributor shall require an applicant who
13 submits such an application simply to provide the capacity
14 of their project, the fuel type, the type of technology and
15 the location of the project. And then under section 6.2.6,
16 this is where we have the 15-day and the 60-day timelines
17 that we are all familiar with.

18 And 6.2.7, as well, we are also familiar with. I
19 don't need to go through that again.

20 But this is the full extent of the process under the
21 Code for these types of micro-generation projects. This is
22 what the Code prescribes, and then due to changes made by
23 the OPA after December 8th, 2010, an applicant, as we know,
24 they have to first get the offer to connect from the
25 distributor, after which they go back to OPA to try to get
26 a conditional offer of a microFIT contract.

27 Now, as indicated by the Board, Hydro One's exemption
28 requests are properly characterized as being an application

1 under section 74 of the OEB Act, and this is for amendments
2 to conditions of Hydro One's distribution licence.

3 Hydro One did not file a copy of its distribution
4 licence with its application, but it's our understanding
5 that the relevant licence is ED-2003-0043. And although
6 Hydro One has previously been granted several discreet
7 exemptions from the Distribution System Code, it appears
8 that Hydro One is currently required by its licence to
9 fully comply with section 6.26 and 6.2.7.

10 Under section 74 of the act, the Board may on the
11 application of any person amend a licence if it considers
12 the amendment to be either necessary to implement a
13 directive issued under the act, or if it's in the public
14 interest, having regard to the objectives of the Board and
15 the purposes of the Electricity Act.

16 In the absence of any evidence to suggest that the
17 exemptions are needed to implement a directive, we assume
18 that it is Hydro One's contention that the exemptions are
19 in the public interest. The burden is on Hydro One to
20 demonstrate that the requested exemptions are in the public
21 interest, and this public interest must be considered with
22 regard to the objectives of the Board as set out in section
23 1 of the OEB Act, as well as the purposes in section 1 of
24 the Electricity Act.

25 Section 1 of the OEB Act includes objectives that
26 include facilitating the maintenance of a financially
27 viable electricity industry, and promoting the use and
28 generation of electricity from renewable energy sources in

1 a manner that is consistent with the policies of the
2 Government of Ontario, including the timely expansion or
3 reinforcement of transmission systems and distribution
4 systems to accommodate the connection of renewable energy
5 generation facilities.

6 Similarly, the purposes in the Electricity Act,
7 section 1, include facilitating the maintenance of a
8 financially viable electricity industry and promoting the
9 use of cleaner energy sources and technologies, including
10 alternative energy sources and renewable energy sources,
11 again, in a manner consistent with the policies of the
12 Government of Ontario.

13 In CanSIA's submission, the Board must deny Hydro
14 One's application because, having regard to the objectives
15 of the Board under the OEB Act and the purposes under the
16 Electricity Act, the requested exemptions are not in the
17 public interest.

18 They are not in the public interest primarily because
19 they are expected to cause further delays in the connection
20 of micro-generation facilities, and this would
21 significantly affect the financial viability of companies
22 that are active or that intend to become active in the
23 solar industry in Ontario.

24 In addition, the effects of the exemption would run
25 counter to the Board's statutory objective of promoting the
26 use and generation of electricity from renewable energy
27 sources in a manner consistent with the policies of the
28 Government of Ontario.

1 It is also worth noting that the purpose of the
2 Distribution System Code itself is to establish the minimum
3 conditions that a distributor must meet in carrying out its
4 obligations. The purpose of establishing such minimum
5 conditions is to protect the public interest in all
6 interactions between distributors and generators, and
7 others who use or who seek to use the distributor's
8 distribution system. This is described in section 1 of the
9 code.

10 The very timelines that Hydro One seeks exemptions
11 from have been made part of the code by the Board after
12 careful consideration and consultation, for the specific
13 purpose of protecting the public interest.

14 With respect to the impact of the requested exemptions
15 on the financial viability of the electricity industry, as
16 we have indicated, 99 percent of microFIT applications are
17 for solar facilities. The solar industry in Ontario is
18 already facing significant challenges as a result of delays
19 in processing by Hydro One and in connecting micro-embedded
20 generation facilities, and due to the high proportion of
21 applications -- sorry, the requested exemptions would be
22 expected to result in further delays in the connection of
23 such projects, which would compound the challenges and the
24 impacts that the industry is already struggling to deal
25 with.

26 The timing of connections by Hydro One is critical, as
27 we have heard, because it influences the entire supply
28 chain from generators or connecting customers to installers

1 and manufacturers of panels and inverters and racking
2 systems, and the companies who distribute the solar
3 products. As a result, the viability of the entire
4 industry can be and is being affected by the timing delays
5 in the connection of projects.

6 Delays are also critical because, as we heard,
7 companies have developed their business processes around
8 those timelines and the requirements under the code. For
9 many, their business model depends on these timelines. To
10 request the exemptions for a period that includes the prime
11 installation season for solar projects only serves to make
12 these impacts greater.

13 CanSIA's evidence indicates clearly that the solar
14 industry in Ontario is already facing significant
15 challenges. The companies that are active in the Ontario
16 solar market are, for the most part, either new start-ups
17 that have emerged in response to the government of
18 Ontario's green energy policies, or they are Ontario-based
19 affiliates of companies that are active in this sector
20 internationally, and who have come here and invested
21 heavily in Ontario in response to the province's green
22 energy policies.

23 Those investments by new start-ups or by Ontario
24 affiliates of international solar companies have been made
25 on the basis of expectations regarding the regulatory
26 framework concerning the connection of solar energy
27 projects. These companies have developed and sought to
28 implement business plans and processes that depend to a

1 significant extent on the timing of connections that are
2 prescribed by the regulatory requirements.

3 As a result of Hydro One's non-compliance with these
4 timelines, many of these businesses have suffered
5 considerably. If the exemptions are granted further delay
6 wills be expected, and the harm to companies in Ontario's
7 otherwise very promising solar industry will be compounded.
8 Many companies in the sector appear to be at or reaching
9 their breaking points. The pace of connections over the
10 next several months and the level of confidence that people
11 in the industry have with respect to the timing of
12 connections will play a very significant role in
13 determining whether these businesses choose to stay in
14 business, expand or scale back operations, close down
15 entirely, relocate to different jurisdictions with more
16 predictable timelines. Decisions are also being made
17 concerning whether to invest in the development or
18 expansion of manufacturing facilities, storage facilities,
19 whether to invest in the hiring and training of, or the
20 retention, even, of staff.

21 In the face of uncertainty with respect to the timing
22 of connections, these plans risk being scaled back or
23 cancelled.

24 For example, we heard from Mr. Hammerbacher of
25 Canadian Solar Solutions. Mr. Hammerbacher explained that
26 his company was formed in response to the green energy
27 policies of Ontario, that the microFIT program was a very
28 significant focus for his company, and that their business

1 plans were developed in reliance on the timing and the
2 regulatory framework set out in the code. Mr.
3 Hammerbacher's evidence describes the significantly lower
4 sales experienced by his company than they had
5 conservatively anticipated. His company, whose parent
6 company operates manufacturing facilities internationally
7 and is one of the largest solar panel manufacturers in the
8 world, invested in developing a major manufacturing
9 facility in Guelph, but contrary to plans, the factory is
10 now only operating one of its three production lines, and
11 it is using about 150 fewer employees than it had planned
12 for this time. Canadian Solar Solutions has recently
13 considered the possibility of layoffs. Mr. Hammerbacher
14 attributes these impacts in large part to the delays in the
15 processing and connection of microFIT projects by Hydro
16 One, and further delays will be expected to compound these
17 impacts.

18 From Mr. Hammerbacher's position in the industry, it
19 was his view that these concerns are serious and widespread
20 within the solar industry.

21 We also heard from Mr. DeSota of EthoSolar. Mr.
22 DeSota, his evidence was that his company was also formed
23 in response to the government's policies and that microFIT
24 it was a significant part of his company's plans, and that
25 they also relied on the regulatory framework set out and
26 the timing requirements for connections. And Mr. DeSota,
27 his evidence also described the various impacts on his
28 company by Hydro One delays in processing and connecting

1 projects, and the high number of refusals that they have
2 experienced, as well. Their business plans have been
3 dramatically affected. They have had approximately 150
4 microFIT projects refused connection or which continue to
5 be delayed, representing about \$12 million in lost
6 business. They used to have about 15 installations on
7 average per week and they are down to about two to three.
8 They used to employ a crew of 50 to 60 full-time contracted
9 electricians, engineers and general labourers, and this has
10 been cut down to about 12 to 15 people. And Mr. DeSota,
11 his evidence also indicated that based on his role and
12 position in the industry, it's his sense that this is a
13 common problem, and that amongst particularly installers,
14 he expects that a number of those businesses will not be
15 able to remain operational if these delays continue.

16 We heard from Mr. Ray of Essex Energy, and similar to
17 the other companies, Essex Energy was established in
18 response to the policies of the government of Ontario, and
19 they relied on the timelines of microFIT, et cetera, and
20 Mr. Ray has described that particularly with respect to the
21 connection requests to Hydro One, these have been processed
22 more slowly than anticipated and that there have been a
23 higher number of refusals than anticipated, and that
24 communications with Hydro One have been unreliable. As a
25 result, projects have been -- the projects -- sorry, this
26 has resulted in projects being installed and then being
27 refused connections, as well as causing revenues to fall
28 short of expectations. Consequently, Mr. Ray's evidence

1 indicates that his company has been forced to seek other
2 business opportunities and to actively consider abandoning
3 the microFIT market in Ontario altogether.

4 Finally, we heard from Mr. Johnston of the Canadian
5 Solar Industry Association, and Mr. Johnston's evidence is
6 basically that from his position in the industry
7 association, what he is seeing and the experiences
8 described by Mr. Hammerbacher and Mr. Ray and Mr. DeSota
9 are typical and highly representative experiences that are
10 being faced by numerous companies across the sector.

11 The level of business uncertainty caused by the delays
12 to date, the high number of refusals, and the filing of the
13 application itself by Hydro One have already made it
14 difficult for companies to move forward with their plans.
15 The granting of exemptions would only serve to increase
16 this uncertainty.

17 Mr. Johnston's evidence also describes how the Ontario
18 solar industry has evolved in recent years, the precarious
19 positions that a number of recent start-up companies are
20 in, and the likely impact of further delays and uncertainty
21 on these businesses.

22 In summary, the exemptions, if granted, would increase
23 uncertainty and be expected to have a certain chilling
24 effect on investment and employment in the solar industry
25 in Ontario. Demand for solar components and related
26 services would be expected to drop due to this uncertainty.
27 Investments in manufacturing and other facilities would
28 also be expected to drop. Financing costs at all levels

1 within the industry would continue to accrue to
2 manufacturers and developers, without any revenue coming in
3 to help cover those costs. Companies would continue to
4 accrue costs for the storage of materials and components
5 that they have already produced, but which cannot yet be
6 installed due to the connection delays.

7 The expected efficiency gains on the manufacturing
8 side, which we heard are so important for manufacturing
9 companies, would not be realized. This puts manufacturers
10 in a position where they will not be able to compete in
11 jurisdictions outside of Ontario.

12 The planned hiring of new employees would not take
13 place. Existing staff will be laid off temporarily or
14 permanently. Expansion plans will be put on hold, scaled
15 back or cancelled, and the long-term prospects for solar
16 industry in Ontario will be severely diminished.

17 As mentioned, the exemptions that Hydro One has
18 requested are also inconsistent with the public interest,
19 because the exemptions run counter to the Board's statutory
20 objective of promoting the use and generation of
21 electricity from renewable energy sources in a manner
22 consistent with the policies of the Government of Ontario
23 and accommodating the connection of such facilities.

24 It is well known that it is the policy of the
25 Government of Ontario to encourage electricity generation
26 from renewable resources and that a critical aspect of this
27 policy is to specifically encourage the development of
28 micro-generation by homeowners and farmer owners and small

1 business owners.

2 The microFIT program is the embodiment of this
3 government policy. It is also well known that the
4 objective of the government's Green Energy policies has not
5 only been to increase the amount of electricity that is
6 used and generated from renewable sources, but also to
7 stimulate and support the development of a strong renewable
8 energy industry in Ontario and to create thousands of jobs.

9 Supporting the development of the solar industry is a
10 very significant component of this policy, as demonstrated
11 by the inclusion of the domestic content requirements in
12 both the FIT and the microFIT programs.

13 Each of these aspects of government policy would be
14 severely undermined by the granting of Hydro One's request
15 for the exemption. The requested exemptions would quite
16 simply serve no public purpose, no public interest purpose.

17 In its application, Hydro One has offered a number of
18 reasons in an effort to explain why it has been unable to
19 comply with code requirements for most of the past year or
20 longer. Hydro One also offered reasons for why it expects
21 to remain unable to comply with the code requirements.

22 In addition, Hydro One provides a description of steps
23 it has taken in the past to achieve compliance up to the
24 date of the application. While all of this will be of
25 interest to the Board, none of this information and none of
26 Hydro One's evidence purports to demonstrate how the
27 requested exemptions might be in the public interest.

28 Consequently, Hydro One has not discharged its burden

1 under section 74 of the OEB Act, and the exemption should
2 be denied.

3 Hydro One claims that section 6.2.6, the exemption is
4 needed essentially because it finds that the time-based
5 requirements of that provision are not achievable by Hydro
6 One at present. The only purpose that we can see that may
7 be served by this exemption would appear to be that it
8 could have the effect of forestalling or mitigating the
9 severity of any compliance or enforcement measures that
10 could be taken by the Board with respect to Hydro One's
11 already lengthy period of non-compliance. In CanSIA's
12 view, no public interest would be served by the granting of
13 that exemption.

14 And with respect to the 6.2.7 exemption, Hydro One
15 similarly explains that this exemption is needed because
16 the time-based requirements of this provision are not
17 practically achievable by Hydro One.

18 Again, there is no public interest purpose in seeking
19 that exemption. There is no convincing evidence that the
20 exemptions would facilitate the clearing of the backlogs of
21 connection applications. There is no convincing evidence
22 to suggest that the exemptions would facilitate the timely
23 review and processing of new connection applications
24 received by Hydro One.

25 There is no clear indication that Hydro One has any
26 plans in place at present to use the time that would be
27 allowed by those exemptions in order to develop or
28 implement any particular strategy or plan that would result

1 in the clearing of the backlog or the more timely
2 processing of applications.

3 Rather, Hydro One has stated that it will continue to
4 use what it regards as, quote, "reasonable commercial
5 efforts" in continuing to process connection requests. And
6 it was not clear from Hydro One's witnesses yesterday as to
7 whether this means that it plans to use a greater degree of
8 effort than that which has led to the present circumstances
9 of non-compliance.

10 There is no indication that Hydro One plans to use the
11 time of the exemptions in order to acquire or deploy any
12 additional resources that may assist it in achieving
13 compliance, and there is nothing to suggest that the
14 exemptions will enable Hydro One to do anything that it
15 would not be able to do without the exemptions or that it
16 could not have done since it first became non-compliant.

17 Rather than being in the public interest, the
18 requested exemptions would be directly at odds with the
19 public interest.

20 Beyond the anticipated harm to the solar industry and
21 inconsistency with the renewable energy policies of the
22 Government of Ontario that I have described, the requested
23 exemptions would serve as a disincentive to the critical
24 need for Hydro One to resolve the backlog of connection
25 applications and to diligently pursue compliance with the
26 requirements of the code.

27 Perhaps one of the strongest policy tools that is
28 available to the Board for bringing Hydro One into

1 compliance with the Board's ability is the Board's ability
2 to raise and to maintain a credible threat that it may
3 impose compliance or enforcement measures in the event of
4 non-compliance -- or continued non-compliance, I should
5 say.

6 For example, under section 112.5 of the OEB Act, if
7 the Board is satisfied that a person has contravened an
8 enforceable provision, such as a licence condition - a
9 licence condition which requires compliance with the code,
10 in fact - the Board may make an order requiring such person
11 to pay an administrative penalty for each day or for each
12 part of a day on which contravention occurs.

13 The purpose of having the ability to impose such an
14 administrative penalty, as stated in the act, is to promote
15 compliance. When considering that Hydro One has been out
16 of compliance with two code provisions for such a long
17 period, this has the potential to be a very powerful
18 compliance tool for the Board and a very strong incentive
19 for Hydro One to diligently pursue compliance.

20 Alternatively, pursuant to section 126(1) of the OEB
21 Act, it would be open to the Board to bring charges against
22 a company for failing to comply with a condition of the
23 licence, and a corporation convicted of such an offence
24 would be liable to significant fines.

25 To grant the requested exemptions would impair the
26 Board's ability to raise and maintain this credible threat
27 that it could resort to the use of such measures in the
28 event that the non-compliance continues or worsens.

1 The requested exemptions would also unreasonably
2 extend the total period of non-compliance by Hydro one.
3 Hydro One's evidence is that it first notified the Board of
4 its non-compliance with section 6.2.6 of the code in late
5 November 2010, but that it first became non-compliant at or
6 just after the launch of the microFIT program in late 2009.

7 If the exemptions are granted, this would extend the
8 total period of non-compliance to a period of greater than
9 two years, with little confidence that compliance will be
10 achieved thereafter.

11 In CanSIA's view, particularly having regard to the
12 impacts on the solar industry, this is not acceptable.
13 While Hydro One may suggest that the exemptions might be in
14 the public interest because of the need for Hydro One to
15 ensure the safety and reliability of its system, in our
16 view, such a suggestion would be misleading.

17 While we can't deny that safety and reliability are
18 obviously important factors, the exemptions themselves will
19 not further the cause of enhancing safety or reliability.
20 Moreover, the need to ensure safety and reliability must be
21 balanced in a reasonable and practical way with the Board's
22 other statutory objectives, including the need to ensure a
23 financially viable electricity industry and to support the
24 government's renewable energy policies.

25 I now just want to turn to Hydro One's technical
26 screening tool. CanSIA generally agreed with Hydro One at
27 the outset of this hearing that the technical merit and
28 appropriateness of the criteria that are used as part of

1 the screening tool are beyond the scope of this proceeding.

2 CanSIA took this position because to focus on those
3 criteria would detract from the central question at issue
4 in this case, which is whether the requested exemptions are
5 in the public interest.

6 In our view, the application raises important
7 questions concerning the nature of the technical screening
8 tool, the regulatory basis for the use of the tool, and the
9 process by which Hydro One developed and implemented the
10 tool. These are considerations that are within the scope
11 of this proceeding.

12 It is also CanSIA's view that the Board must not
13 ignore the fact that there is, to put it mildly perhaps, a
14 very high degree of skepticism within the solar industry
15 concerning the technical merits of the criteria used by
16 Hydro One in the technical screening tool.

17 The bulk of this concern relates to the condition that
18 Hydro One has established, which states that the total
19 generation to be interconnected to a distribution system
20 circuit line section, including the proposed generator,
21 will not exceed 7 percent of the annual line section peak
22 load.

23 There is no consensus view within CanSIA concerning
24 the merits of this criterion at present. However, the
25 views within the industry on this particular criterion
26 range.

27 At one end of the spectrum, is the view that there may
28 be some technical merit behind this threshold, but it is

1 unreasonably conservative.

2 At the other end of the spectrum is the view that this
3 threshold was specifically used for the purpose of limiting
4 the number of microFIT connection applicants who would be
5 given offers to connect.

6 Perhaps in the middle of the range is the view that
7 the 7 percent threshold is arbitrary or is based upon a
8 misunderstanding or misinterpretation of international
9 standards.

10 As will be discussed, it will be CanSIA's submission
11 that if the Board finds that there is a regulatory basis
12 for Hydro One to employ the use of a technical screening
13 tool in processing micro-generation connection requests,
14 then the Board should establish a separate forum that will
15 allow for the consideration of these technical issues.

16 With respect to the use of the screening tool, we note
17 that the process under the code is clearly intended to be
18 timely and to involve minimal technical review, if any.
19 The use of the tool represents a departure from this
20 intention.

21 Hydro One developed its tool without consulting with
22 industry and without obtaining prior Board approval. It is
23 not clear how Hydro One went about developing the screening
24 tool or the criteria that formed part of the tool. Rather,
25 it seems that an ambiguous set of new technical
26 interconnection requirements, including the 7 percent
27 threshold, suddenly appeared on Hydro One's website in
28 early 2011.

1 These requirements then became the primary basis for
2 Hydro One in refusing to connect numerous microFIT
3 projects. The need to screen and to re-screen applications
4 on the basis of these Hydro One requirements is also now
5 being relied upon by the applicant as one of the main
6 contributors to its non-compliance.

7 It is also unclear, based on the testimony provided by
8 Hydro One's panel yesterday, whether the technical
9 screening tool is something new at all. The experience
10 from the industry's perspective is that the new technical
11 requirements appeared on the website in February 2011, and
12 within a week or so Hydro One issued a high volume of
13 refusal letters.

14 However, Hydro One's testimony was that it has for
15 many years had a manual screening process in place that
16 applied the exact same criteria, including the 7 percent
17 threshold, as are set out in the tool, and that the only
18 change in late 2009 was that the manual screening process
19 was automated.

20 If Hydro One has for many years applied this 7 percent
21 threshold, then it is not clear why so many of the
22 compliance problems and the high levels of connection
23 refusals that are now being experienced were not
24 anticipated by Hydro One years ago. It is not also not
25 clear why Hydro One did not communicate this to the
26 industry years ago.

27 So in conclusion, it is clear that CanSIA's position
28 is that the exemption requests should be denied. However,

1 simply denying these exemptions will provide only a small
2 comfort to CanSIA's members, and the underlying issues
3 related to connection delays and connection refusals by
4 Hydro One.

5 What is needed, in our submission, is a multi-pronged
6 approach to encourage, facilitate and ensure that
7 compliance will be achieved. This is necessary in order to
8 bring greater certainty to the solar industry.

9 CanSIA therefore seeks the following six items.

10 First, for the reasons described, that the application
11 be denied.

12 Second, for the reasons set out in CanSIA's
13 submissions of July 8th, as well as the reasons described
14 here, that Hydro One's Interim Order request be denied.

15 Third, that Hydro One be required to file with the
16 Board and serve on all parties in this proceeding monthly
17 compliance reports, setting out Hydro One's then-current
18 compliance status, an update of its forecast compliance
19 levels, specific measures taken during the period to which
20 the update relates, and an appropriate breakdown of the
21 data on applications that is consistent with the breakdowns
22 provided in Exhibits K1.1 and J1.7. And perhaps there were
23 other undertakings and exhibits that provided similar data.

24 We propose that such ongoing compliance reporting and
25 the Board's monitoring thereof continue until such time as
26 Hydro One achieves full compliance for a period of six
27 consecutive months or longer.

28 Fourth, that Hydro One be required to file with the

1 Board and serve on all parties in the proceeding a detailed
2 compliance plan with specific objectives, strategies,
3 milestones, timelines, including demand planning, such as
4 what Mr. Hammerbacher referred to earlier today, the
5 consideration of whether external expertise would be
6 helpful in reviewing business process, and the
7 implementation of which would result in Hydro One achieving
8 full compliance with sections 6.2.6 and 6.2.7 by no later
9 than such date as the Board may specify.

10 CanSIA proposes that such date be no later than
11 December 31st, 2011. The rationale for this date is that
12 the testimony of Mr. Hubert was that when the application
13 was filed by Hydro One, it was anticipated that the end of
14 the six-month exemption period, at which time compliance
15 would be achieved, would be around the end of 2011. And
16 the reference for that is on page 114 of the day 1 hearing
17 transcript.

18 Fifth, that the Board determine whether Hydro One is
19 permitted under the code to employ a technical screening
20 tool in the processing of applications to connect micro-
21 generation facilities, and whether it may do so without
22 having carried out any consultations on the use of the
23 tool, without any prior notice to the Board or otherwise,
24 and without prior review or approval from the Board.

25 If the Board determines that it is permissible for
26 Hydro One to use such a tool, then it is our submission
27 that the Board should establish a process or a forum and
28 the timing thereof that would allow for a review and

1 consideration by the Board of the technical merits and the
2 technical validity of Hydro One's technical screening tool,
3 having regard to the objectives of the Board and the
4 objectives in the code of facilitating the timely
5 processing and connection of micro-generation facilities.
6 The focus for such process would be on the criteria in the
7 tool.

8 And finally, it is suggested that the Board consider
9 whether an appropriate mechanism for implementing this
10 multi-pronged approach might be a Compliance Order.

11 It is customary, I understand, for such an order to
12 include a condition that failure to comply with such a
13 Compliance Order would amount to a breach of an enforceable
14 provision, and therefore could result in enforcement
15 proceedings.

16 These are our submissions. Thank you.

17 MS. CHAPLIN: Thank you, Mr. Myers.

18 MS. HARE: I just have a very small question.

19 When you speak about the separate forum to look at the
20 screening tool, I would guess that you would not be
21 opposed, if that does happen, for it not be Hydro One-
22 specific, but would also apply to all distributors?

23 MR. MYERS: If you just give me a minute, please?

24 Yes, well, our understanding is that Hydro One is the
25 only one that is using the screening tool, but if it needs
26 to apply to other distributors who might be using the tool
27 or something similar, then that's understandable as well,
28 and that's acceptable.

1 MS. HARE: Thank you.

2 MS. CHAPLIN: Thank you, Mr. Myers.

3 Ms. Brant?

4 MS. SEBALJ: Can I just interrupt for one second?

5 During Mr. Myers' argument, another undertaking was
6 filed, and I just thought I would bring it to everyone's
7 attention. It's J1.12.

8 I will just distribute those now. So if you have time
9 to change your argument and incorporate that in on the fly,
10 I will be very impressed.

11 MS. BRANT: Would that mean that all undertakings have
12 been filed?

13 MS. SEBALJ: No. I believe J1.2 is still outstanding.
14 Apparently J1.2 has entered the room, so we may as well
15 distribute that one at the same time.

16 MS. CHAPLIN: Whenever you are ready.

17 **SUBMISSIONS BY MS. BRANT:**

18 MS. BRANT: Thank you. Thank you to the Board. I am
19 here on behalf of the Ontario Sustainable Energy
20 Association. As you may already know, it's a non-profit
21 organization. We have several members of the organization
22 that have microFIT projects.

23 We have already heard from -- all of the other
24 intervenors today have provided their final arguments. If
25 it assists the Board, I would inform the Board that we do
26 strongly support the arguments that were made by Mr.
27 Carten, and we also strongly support the arguments that
28 were made by CanSIA.

1 However, we do take somewhat of a different approach
2 in terms of whether or not a decision should be made to
3 grant the exemption or not, and I will get into that. But
4 to save time in terms of the arguments that were put
5 forward, OSEA submits that CanSIA put forward a very
6 thorough argument on the public interest and on the other
7 issues that were raised.

8 So there are two points that I would like to touch on,
9 the first being that it is OSEA's submission that the
10 public interest will not be served by granting the
11 exemption requested today. And the second point that OSEA
12 would like to submit is that it is in our view that this
13 application is incomplete.

14 So going back to our first point on the public
15 interest, there are two points that I would like to make to
16 the Board on this issue. The first is that what has been
17 presented are mitigation steps, and the mitigation steps
18 that we have heard in the application and throughout the
19 cross-examination -- or through the cross-examination has
20 only talked about part of the problem.

21 It's OSEA's submission that the mitigation steps
22 address section 6.2.6, but that the mitigation -- but that
23 it's unknown how the mitigation steps will address
24 compliance with 6.2.7.

25 It was submitted by Mr. Hubert, and it is in the
26 application as well, that it's not clear that 100 percent
27 compliance is possible, although that is the goal. And it
28 was only through cross-examination yesterday that we found

1 out that the compliance issue before the Board is
2 significant. It relates to 30 percent non-compliance.

3 And it was only through the cross-examination before
4 the Board yesterday that we found out that more than
5 38 percent of the applicants or applications have been
6 refused. This information wasn't clearly in the
7 application. It was only through our cross-examination
8 that we were able to gain this picture.

9 So my second point is that there is no compliance plan
10 that has been put forward before the Board to consider.
11 What has been requested is that the Board understand the
12 efforts that are being made, and that we seek to have good
13 faith with what's being done and good faith going forward,
14 but there is no specific compliance plan for the Board to
15 consider.

16 A lot of the cross-examination has sought to figure
17 out what the problem is, and we have received several
18 undertakings that are likely quite helpful, if I have the
19 chance to take a look at them, to understand where the
20 solution lies.

21 But, again, it's only through the undertakings that we
22 have received this information, and it was not in the
23 application in and of itself to begin with.

24 Hydro One asks that the Board grant that it be
25 permitted to follow reasonable commercial efforts during
26 the exemption period and that it be permitted to apply the
27 rules that relate to load customers, the 7.2.1 and the
28 7.2.3, during the exemption period.

1 OSEA submits that if we look at Hydro One's track
2 record, what we are seeing is a 70 percent compliance.
3 That's the number that just keeps coming out. We are not
4 seeing a 90 percent compliance that's required in 7.2.1.

5 Now, Hydro One also admits in their application and in
6 the evidence that we heard that they could not have
7 predicted the compound issues that have been established by
8 the volume, by the spikes, by the poor communication that
9 exists between the OPA and Hydro One. That's Hydro One's
10 testimony.

11 And now what is the public interest?

12 The public interest, in our view, is that there indeed
13 be an expedited process for connecting these types of
14 projects. The public interest, in our view, is that the
15 contract that the applicants bargained for is what they
16 get.

17 There was a question from Board Staff to Marion Fraser
18 about whether or not the OPA would grant an exemption to
19 projects that may be potentially -- that may potentially
20 expire. OSEA would submit there is no process for that.
21 It's not official. It's a waiting game, and applicants are
22 merely crossing their fingers and hoping that the OPA will
23 do this, though they haven't submitted anything public to
24 say that's the case, and they haven't amended their
25 contracts.

26 The FIT program is supposed to be about the -- the
27 microFIT program, rather, is supposed to be about projects
28 that get connected.

1 So I would ask that we take a step back, and OSEA
2 submits that we have just walked too far into section 2.6
3 and section 2.7, that we have really lost sight of the
4 original goal, which was to promote connections. That was
5 a goal that was expressed back in 2008 when the Board
6 looked at making the original amendments.

7 If it is that the outcome of that decision is not
8 suitable for the current circumstances, the original goal
9 still remains unchanged, and it's that original goal that
10 Hydro One also has indicated they are supportive of. And
11 in their application, they submit that in light of these
12 issues that the Board may wish to entertain certain
13 amendments to the code, so they are open to that.

14 What's come before the Board is a request for an
15 exemption. At the same time, Hydro One has told you that
16 they are open to amending, finding a way to amend the code
17 provisions, should that be in the Board's -- should that be
18 the Board's decision or course of action that they would
19 seek to take.

20 So it's for this reason that we feel that the
21 application is incomplete.

22 From OSEA's position, and based on the information
23 that came across in the cross-examination, Hydro One had an
24 opportunity to come before the Board and explain the
25 severity of the issues that exist, not just the compliance
26 issue that exists with 6.2.6 and 6.2.7, but Hydro One
27 always had the opportunity to come before the Board -- it
28 may be in that November 26th letter, I don't know -- but

1 Hydro One had the opportunity to come before the Board and
2 explain that: We have a serious non-compliance issue, not
3 only with 6.2.6 and 6.2.7, but we also have a serious non-
4 compliance issue with our original goal, the goal that we
5 helped to shape, that we play a strong role in, and that
6 goal is to allow all of these projects to be connected.

7 What we were told yesterday through cross-examination
8 is that there are 4,000 refusals. There was an article in
9 the Globe and Mail this morning, and that's what they are
10 talking about. They are talking about the refusals.

11 If we take into consideration the information that
12 came from Mr. McLellan and Mr. Quenneville, what they care
13 about is how their project is going to get connected.
14 That's what they care about, and they are part of the
15 public and I would submit their position should be very
16 carefully taken into consideration, because Mr. McLellan
17 explained that he invested \$100,000, and this was clearly
18 part of his retirement plan.

19 So what we are looking at is hundreds of millions of
20 dollars, if we were to look at all the refusals, of
21 investment that could be brought into Ontario that could
22 really create economic stimulus, that -- you know, the
23 Green Energy Act was all about an opportunity, and what we
24 are here before the Board on is the nuances of 6.2.7 and
25 6.2.6.

26 So it's OSEA's position that Hydro One has submitted
27 an incomplete application or rather that we would have
28 preferred if it wasn't a request that was so narrow, and

1 the request being that it relate only to an exemption, but
2 rather we would ask that if the Board feels that it has
3 enough information to make a decision, that it impose very
4 strict conditions on Hydro One.

5 But OSEA would submit that there isn't enough
6 information in this application, and that the decision
7 should not be made on this narrow of a scope. We would
8 submit that an interim stay, so that we continue on to
9 build and figure out what the solution is that's going to
10 be in the public interest, is an approach that's available
11 to the Board.

12 It's our view that if the exemption is granted, that
13 the next article that's going to be in the Globe and Mail
14 the next day is going to be that Hydro One has been
15 permitted to drop tools. Hydro One has told you that's not
16 what they are going to do, but the reality is all of the
17 articles in the newspaper and everyone's perception is
18 going to be that Hydro One has been permitted by the Board
19 to drop tools.

20 And so for this reason the Power Workers' Union talked
21 about a perception, but it's out view that perception --
22 perception is not the way OSEA would characterize it.

23 It's going to be a loss of confidence, is what we are
24 really dealing with. That's at the crux of the decision
25 that the Board has to make. And if the Board feels that it
26 doesn't want to impact and have a negative impact to the
27 industry, that some form of interim stay that does not
28 permit the exemption, because of the effect that that's

1 going to have on the market, maybe that is the middle road
2 that we can take while we continue to work through the plan
3 that has been built on through the cross-examination that
4 took place yesterday.

5 I understand that CanSIA has provided a very lengthy
6 list of how they would see a compliance plan come together,
7 and OSEA is generally supportive of that. What we would
8 add to it is that if there are conditions made, that one of
9 the conditions be made that Hydro One is not permitted to
10 refuse an applicant simply because it cannot meet the
11 timeline.

12 We heard that yesterday. Hydro One said: The result
13 is that if we are forced to comply with 6.2.6 and 6.2.7, we
14 will refuse applications, so that we can meet the stringent
15 requirements of 6.2.6 and 6.2.7. So if there are
16 conditions that the Board -- what we would recommend that
17 conditions are absolutely necessary, whether they be to --
18 however you see fit to make your decision.

19 As I said, OSEA would prefer a decision that does not
20 send the wrong signal to the market and to the public, but
21 that it be made clear that Hydro One cannot refuse an
22 application in order to meet the timeline. I don't think
23 that serves anyone's interest.

24 So in summary, it's OSEA's position that granting the
25 exemption is not in the public interest, and that OSEA
26 submits that the Board has a real opportunity with this
27 application to request that Hydro One come back with a plan
28 that not only addresses compliance with 6.2.6 and 6.2.7,

1 but that it is also a plan that addresses how the refusals
2 are going to be dealt with.

3 In our submission -- Marion Fraser talked about
4 applying for a rate rider. It's our submission that it's
5 before the Board; the Board has the option, has the
6 opportunity to require that Hydro One come back with a plan
7 in accordance with 70(2.1)(2) of the act to show how it's
8 going to deal with those refusals, and by doing so the
9 Board would demonstrate a balance over the public interest,
10 in addition to Hydro One's issues that they face. Thank
11 you.

12 MS. CHAPLIN: Ms. Brant, your suggestion around a
13 compliance plan, which would include how refusals would be
14 dealt with, what is that compliance with? There is no
15 requirement on Hydro One at this point that they accept all
16 applications, so I am trying to understand where we would
17 get our authority to do that, to bring a compliance action
18 on refusals.

19 MS. BRANT: It's within the Board's jurisdiction to
20 require Hydro One to file a plan under 70(2.1)(2).

21 MS. CHAPLIN: Yes, I understand that, at least in the
22 first instance, would deal with their plan for bringing
23 themselves into compliance with 6.2.6 and 6.2.7, but part
24 of 6.2.6 is Hydro One's ability to -- the requirement is if
25 they are going to refuse, they have to provide the reasons
26 for those refusals.

27 I take from your submissions that what you are
28 proposing is that Hydro One bring forward a plan which

1 would ensure that they don't have to issue any refusals,
2 that that is something they should have to comply with, and
3 I am just wondering where we find the basis for that.

4 MS. BRANT: I would submit that the basis for making
5 that request on Hydro One lies in the original impetus for
6 the changes to the code in the first place. The original
7 reason for the 2008-0102 was to come up with an expedited
8 manner for promoting renewable energy generation.

9 MS. CHAPLIN: All right, thank you very much.

10 Ms. Sebalj, we know you are next. However, the Panel
11 would like to take a break. At this point, based on the
12 submissions you have heard so far, how much time will you
13 require? Will you require a break to prepare for any
14 reply, or would you be able to --

15 MR. ENGELBERG: Madam Chair, I will require a break.
16 I would suggest 30 minutes.

17 MS. CHAPLIN: If we take that 30 minutes now -- well,
18 what about if we take 20 minutes now, and then we will see
19 how much additional time you need after Ms. Sebalj? Would
20 that be satisfactory?

21 MR. ENGELBERG: Yes. Thank you.

22 MS. CHAPLIN: Okay, we will do it that way. We will
23 take 20 minutes now, please.

24 --- Recess taken at 3:40 p.m.

25 --- On resuming at 4:09 p.m.

26 MS. CHAPLIN: Thank you. Ms. Sebalj, are you ready to
27 go?

28 MS. SEBALJ: I am.

1 **SUBMISSIONS BY MS. SEBALJ:**

2 MS. SEBALJ: There have been a lot of numbers bandied
3 about in the last few days, and some analysis conducted on
4 those numbers. Certainly Board Staff has categorized and
5 sub-categorized and re-categorized the almost 16,000
6 microFIT applications received by Hydro One since the
7 launch of the program in October of 2009.

8 We have tried to come to a better understanding of
9 just how big the non-compliance problem is and what Hydro
10 One has been doing to address it.

11 To its credit, Hydro One has come to the Board
12 admitting that it's in non-compliance with the sections in
13 question. There is no debate about whether or not there is
14 a problem, just the nature of the problem and what can be
15 done to address it.

16 Hydro One has provided an overview of a number of
17 mitigation measures it has implemented in an effort to
18 comply with both sections, 6.26 and 6.2.7, of the
19 Distribution System Code. The question for Board Staff is
20 whether these measures go far enough, and what more can be
21 done for Hydro One to bring itself into compliance.

22 There is clearly some legitimate debate about whether
23 Hydro One should or could have anticipated and better
24 prepared for the influx of applications, and there have
25 been some tough questions about whether Hydro One has done
26 enough to attempt to work within the timelines provided in
27 sections 6.2.6 and 6.2.7, but at the end of the day, Board
28 Staff is of the view that there are a few important themes

1 that have emerged from Hydro One throughout this hearing.

2 The first is about volumes. While there has been a
3 steady influx of microFIT application to Hydro One since
4 program launch, there have also been, according to Hydro
5 One's evidence, sporadic, unpredictable and dramatic spikes
6 in some cases in the number of applications. Hydro One
7 says these spikes were largely out of its control and that
8 it wasn't able to see them coming.

9 This is important, in Board Staff's view, because it
10 seems to be linked to the primary source of the backlog,
11 which is part of the problem that Hydro One is dealing
12 with.

13 The second sort of large theme is about process
14 requirements, and in particular Hydro One has described a
15 sequential process, particularly for applications requiring
16 site assessments, the timelines for which Hydro One
17 suggests cannot be impacted by simply throwing additional
18 resources at the problem.

19 And I do have a transcript reference there. It's
20 Volume 1, page 24, at lines 10 to 16.

21 If we look to Undertaking J1.1, this suggests that for
22 that particular snapshot in time, approximately 70 percent
23 of the applications that are -- of the applications that
24 are not in compliance required site or technical
25 assessments to be completed. And that suggests to Board
26 Staff, along with the testimony of Hydro One to this
27 effect, that the ability to conduct site assessments within
28 the prescribed timelines is at least contributing to the

1 non-compliance issue.

2 Finally, and perhaps related to the point above, we
3 have heard about some customer-driven behaviours and
4 decisions; for example, incomplete applications, the desire
5 to be at the site when a site visit occurs or when
6 connection occur, which Hydro One says can impact its
7 ability to meet the timelines required by the Distribution
8 System Code. And we have attempted to tease those
9 instances out of the larger non-compliance picture.

10 These are all important because they take what might
11 otherwise look like a fairly dismal picture of non-
12 compliance -- and I haven't had a lot of time to absorb it
13 but Exhibit J1.12, which -- sorry, it's not an exhibit.
14 It's Undertaking J1.12, at least at first blush, paints not
15 a great picture, at least with respect to the outliers in
16 all instances of the types of applications that Hydro One
17 receives.

18 What Board Staff has learned through this process is
19 that a significant piece of the non-compliance problem
20 seems to lie in a particular category of application,
21 namely this standard or indirect or parallel -- there have
22 been a lot of numbers bandied about -- but an application
23 for connection at an existing customer connection site for
24 which a site assessment is required.

25 Section 6.2.6 of the Distribution System Code
26 stipulates that for this type of application, the
27 distributor is required to make an offer to connect or
28 provide reasons for refusing to connect within 15 days of

1 receiving the application.

2 We heard from Ms. Kingsley that for standard -- for
3 these standard, typical parallel connections for which no
4 site assessment is required, Hydro One has been able to
5 reduce its 6.2.6 processing time to four days on average.
6 And for standalone or direct connect applications where
7 there isn't an existing connection, the average processing
8 timelines are 41 days.

9 Both of these averages -- and I recognize that they
10 are averages, and particularly in light of Undertaking
11 J1.12 -- but they both fall within the prescribed timelines
12 of the Distribution System Code.

13 For a standard connection at an existing customer
14 connection where a site assessment is required, the average
15 number of days to process an application to get it to the
16 point where an offer to connect or a refusal with reasons
17 can be made is 32 days. And this is well outside -- it's,
18 in fact, more than double -- the requirement of 15 days.

19 While there are other areas of non-compliance, this
20 and other evidence seem to indicate that this is the
21 largest area of non-compliance. It's worth noting that for
22 some of the claims that we have heard from Hydro One, in
23 particular the expectations that uptake for the microFIT
24 program was expected to be largely urban and load-
25 displacing, and that it was going to be focussed on
26 projects that would be connecting at an existing customer
27 connection, the Board actually turned its mind to these
28 very same issues in the context of its Notice and Comment

1 process, which was EB-2008-0102, and that was the code
2 amendment process that resulted in the changes to the
3 Distribution System Code sections from which Hydro One now
4 seeks an exemption.

5 And I do have copies of something that I am going to
6 refer to, which is the December 9th, 2008 Notice of
7 Proposed Revised Amendments. I can provide them -- I can
8 read it to you. I don't think you can provide the copies,
9 but I will just read it for the record. It says:

10 "With respect to the connection process currently
11 applicable to micro-embedded generation
12 facilities, the Board notes that it is currently
13 focussed on facilities that are going to be
14 located at existing customer connections.
15 Although this is expected to remain the most
16 likely configuration for micro-embedded
17 generation facilities, the Board considers it
18 prudent to make provision for the eventuality
19 that a micro-embedded generation facility might
20 be located other than at an existing customer
21 connection."

22 So the Board was also contemplating that most of the
23 applications would be for projects connecting at an
24 existing customer connection.

25 What we now know from the evidence is that
26 approximately 25 percent of the applications to Hydro One
27 are for standalone projects. Now, what Hydro One has told
28 us indicates that they are managing those applications, on

1 average, again, within the timelines prescribed, but it
2 just goes to the notion that certainly the Board was under
3 the same -- the same apprehensions that Hydro One was with
4 respect to how this program might roll out.

5 All of this has led Board Staff to come up with a
6 proposal which attempts to strike a balance between
7 compelling compliance in relatively short order, while
8 providing some relief from the timelines for those
9 categories of applications that have presented as the most
10 challenging for Hydro One.

11 The goal is to provide some relief in the area of
12 greatest need, in Board's Staff's perspective, from what we
13 have heard, in order to allow Hydro One to deal with the
14 backlog of non-compliance, and put plans in place to meet
15 future demand so that compliance can be maintained and
16 improve for all microFIT applications and connections.

17 So here is the proposal.

18 We have heard from intervenors and from Hydro One
19 about sort of two approaches, metrics and reasonable
20 efforts, and in my submission, this is a bit of a
21 combination of the two. I know Hydro One did not want
22 metrics, and all the intervenors would have preferred to
23 have metrics, I suspect, or I know from what they have
24 said.

25 So Board Staff would support the granting of an
26 exemption to both sections to February 29th, 2012, with
27 conditions.

28 I will speak to the conditions in a moment.

1 The exemption, however, would be narrower than Hydro
2 One has proposed.

3 So for section 6.2.6, the only category of exemption
4 would be for applications that require compliance within 15
5 days and a site visit.

6 We have heard from Hydro One that the average time to
7 process an application to get it to the point of an offer
8 to connect or a refusal with reasons is 32 days. And so in
9 an effort to require a little bit of a stretch, Board
10 Staff's proposal is that the exemption could be that Hydro
11 One is required to meet a metric of 30 days, and that --
12 and we are in the Board's hands, obviously, on all of this,
13 but we were going to propose something like 30 days
14 80 percent of the time during the exemption period.

15 We also thought about the potential for having a
16 staggered metric where it is 30 days 80 percent of the
17 time, and then after three months 90 percent of the time,
18 so that there is a requirement that Hydro One be improving
19 over time; and, in Board Staff's view, in light of the
20 evidence, that no exemption is required for an application
21 that would normally be required to be at the offer to
22 connect or reasons for refusal stage in 15 days if no site
23 visit is required, and no exemption required for an
24 application that would have been required to be completed
25 within 60 days, which is a stand-alone.

26 We understand that there are outliers and that the
27 averages that were spoken to by Ms. Kingsley were not hard
28 and fast, but that would require them to come into

1 compliance with respect to those outliers in short order.

2 With respect to 6.2.7, Board Staff is of the view that
3 the request of Hydro One is reasonable, and so that for the
4 period of time until the end of February, compliance with
5 7.2.1 and 7.2.3 would be appropriate, which, as you know,
6 is the 90 percent compliance. That's the 7.2.3.

7 On the 7.2.1, the one concern that Board Staff had was
8 this notion that there may be mutual agreement between
9 Hydro One and the parties, which I know is the point.
10 However, Board Staff would prefer if it was made clear --
11 if it was made clear to Hydro One that Hydro One needed to
12 make clear to customers that it is their right not to defer
13 connection, that they don't have to mutually agree and that
14 if that's the case, once all of the requirements are met,
15 Hydro One is required to connect within five days.

16 So that sort of describes the proposal with respect to
17 exemptions. Board Staff has a number of conditions that it
18 would add. The first is a requirement to file a compliance
19 plan with the Board that addresses the following.

20 The first bullet is customer communications, and Board
21 Staff would propose that Hydro One provide a plan for
22 ensuring that customers have a clear point of contact for
23 both the offer to connect and the refusal process under
24 6.2.6, and the connection process under 6.2.7. If that's
25 the same contact, that's obviously fine.

26 Customers should be made aware of the status of their
27 applications throughout the process and be informed as soon
28 as Hydro One determines that the project is constrained,

1 and that a refusal will therefore be issued. Even if Hydro
2 One intends to continue to re-screen the project, if the
3 application is refused and Hydro One intends to re-screen,
4 this should be made clear and customers should be given an
5 answer on the re-screening within a predefined timeline.

6 And, again, Board Staff has suggested no more than 45
7 days. That may or may not be reasonable from either the
8 Panel's perspective or Hydro One's perspective, but we
9 thought we would put a number out there. This is to avoid
10 having the customer rely on the faint hope that their
11 projects may proceed in any event.

12 And related to that, while Hydro One's form C does not
13 seem to have -- does seem to have cautionary language in
14 relation to the making of investments prior to having an
15 offer to connect, we have seen one example here where that
16 didn't seem to have the intended effect.

17 And so part of the customer communication plan, from
18 Board Staff's perspective, would be a requirement that
19 Hydro One come up with a different, better alternate method
20 to make absolutely clear to applicants that all investments
21 made prior to an offer to connect are at the customer's
22 risk.

23 The second bullet under the compliance plan is
24 resources. So Hydro One would be required to provide an
25 outlook regarding resourcing and the need for new hires,
26 reallocations over time or other resources, depending on
27 certain threshold volumes of applications, and accounting
28 for contingencies such as storm events.

1 Hydro One would have to document continuous -- its
2 continuous communication with the OPA and stakeholder
3 groups so they can get a better forecast of application
4 volumes and, therefore, the need for additional resources.
5 And that's related to the reference in the evidence to
6 sometimes a six-week lead-up when they need new resources.

7 The third bullet is site assessments. Hydro One would
8 be required to provide, as part of its compliance plan, a
9 plan for streamlining and optimizing site assessments to
10 narrow the timelines as much as possible, understanding
11 that we have heard that it is sequential and timelines can
12 only be narrowed so much, and for ensuring consistent and
13 up-to-date communication with field staff in all
14 jurisdictions.

15 A policy for missed appointments and clear
16 communication ahead of time if site visits are in jeopardy
17 of being cancelled should also be included.

18 The next is technical limits. Hydro One would be
19 required to provide a plan to ensure that the re-screening
20 of failed projects does not compromise Hydro One's ability
21 to process new applications in a timely manner, and provide
22 continuous and public reporting on system upgrades and the
23 results in terms of new offers to connect of those
24 upgrades.

25 I think we have heard in the evidence that Hydro One
26 has on its website at least two or three different pieces
27 of information that people can access to see where there is
28 room. So part of this may already been done, but it's more

1 making sure that people understand that that has resulted
2 in new offers to connect.

3 The next is a backlog management plan, and I have no
4 description of that, because I don't know what it would
5 look like, but I would hope that Hydro One could come up
6 with one.

7 The next is a contingency plan, and this is related to
8 the volumes I spoke of before, so for increases in
9 applications above a certain norm. So only Hydro One I
10 think is equipped to tell us, but there must be a point at
11 which Hydro One needs to put a contingency plan in place,
12 because it just simply can't continue to process the
13 applications it's receiving.

14 The next piece -- so that's the compliance plan, so
15 the next condition would be around reporting and
16 transparency. And we have prepared a suggested table,
17 which may or may not be something that is ultimately
18 decided upon - and there may be input from parties,
19 including Hydro One - that Vince is going to distribute,
20 that Board Staff proposes that Hydro One would be required
21 to provide to the Board on a monthly basis during the
22 exemption period.

23 Sorry, did I mention a date for the compliance plan?
24 I probably didn't. Board Staff proposes that the
25 compliance plan would be -- because the exemption period is
26 fairly compressed, that the compliance plan would be
27 provided to the Board no later than October 1st, so then
28 that plan could be used going forward during the exemption

1 period.

2 So you will see that Board Staff has prepared this
3 table, and what it essentially does is combine the elements
4 of undertakings J1.7 and J1.11, and it recognizes what
5 Board Staff believes to be are the three distinct
6 categories of connection type. So that's along the left
7 hand, 15 days no site visit required, 15 days site visit
8 required, and 60 days direct connect.

9 It has at the top a cumulative total category that
10 would capture Code compliance split into offers to connect,
11 reasons for refusal and connections made, and then the "C"
12 and "NC" compliant and non-compliant.

13 The current snapshot is meant to convey the current
14 number of non-compliant applications in the period where
15 Board Staff would be hoping that, over time, these would
16 show a progression to zero over the period of the
17 exemption, zero non-compliant.

18 And then the previous month, handle time is something
19 that Staff thought that average handle times, as discussed
20 by the witnesses, are a good indication of not only what
21 Hydro One concedes is achievable, but also will indicate
22 process efficiencies gained over the period.

23 Board Staff also submit that the recording of
24 information should be changed such that the clock for the
25 timelines prescribed in section 6.2.6 of the Distribution
26 System Code doesn't start ticking until a completed
27 application is received, and would add that Hydro One
28 should provide clear notice to customers when applications

1 are incomplete and when they are complete, and therefore
2 when the timeline has started.

3 And you will see that there is a second table that
4 gives further information with respect to incomplete,
5 withdrawn and expired applications. In addition to the
6 table, Board Staff submits that the information contained
7 in Undertaking J1.12 on how late non-compliant applications
8 were should also be a continual reporting requirement, so
9 that the Board and intervenors and the public are able to
10 track continual improvement with respect to how long
11 applications are taking, even in the non-compliant
12 category.

13 Board Staff submits that the evidence in cross-
14 examination of the Quennevilles and McLellans shed light
15 that being late is one thing, but in their cases just how
16 late the communication was is just as, if not more,
17 important to some of the independent rural generators.

18 The third piece of the Board Staff proposed conditions
19 is publication. So Board Staff submits that reporting
20 should include -- sorry, Hydro One spoke of its compliance
21 culture, and I have a transcript reference for that. It's
22 page 32, lines 19 to 24, and Board Staff submits that it
23 should provide the reports of its progress with respect to
24 the distribution system compliance exemption on a prominent
25 section of its website, as well as provide copies for the
26 Ontario Power Authority and the OEB, and possibly for
27 others, as may be determined by the Board or suggested by
28 other parties.

1 And finally, the fourth condition would be a return to
2 the Board. So immediately following the exemption period,
3 -- I am not sure what that date would be -- a return to the
4 Board, either in person or in writing, at the Panel's
5 discretion, for a discussion of appropriate next steps,
6 unless compliance has been achieved.

7 I do note that the evidence has led Board Staff to
8 seriously doubt whether, for the current timeline specified
9 in the Distribution System Code, 100 percent compliance is
10 achievable. And I refer you to page 84 of the transcript,
11 and that's Volume 1, obviously, from August 11th. I asked:

12 "Can you explain why a hundred percent compliance
13 target is too onerous, and specifically how that
14 meshes with the earlier statement that Hydro One
15 was going to attempt to come into compliance
16 within the exemption period, if it is granted,
17 with the sections of the code?"

18 And Mr. Hubert answered:

19 "The 100 percent compliance target, we believe,
20 is too onerous because it is exclusive and
21 basically directing the customer to put all hands
22 on deck on distributed generation, and microFIT
23 connections, in this case. And it is --
24 ultimately it competes with some of the events
25 Mr. D'Arcey responded to."

26 And that, I believe, was a reference to storm events
27 and other contingencies.

28 "So in the extreme, we would make effort to --

1 and would really, truly, be a best effort to
2 connect microFIT generation to the exclusion of
3 any other activities. So we believe that it's
4 not unachievable, but it's probably not
5 pragmatically achievable. In terms of -- I think
6 we keep returning to the same issue. If it is so
7 difficult, how does Hydro One intend to manage
8 through the six months. And I think ultimately
9 we may very well find out that this is something
10 that is unsustainable, that the measure is, in
11 fact, incompatible with running other
12 distribution activities, and we may need to --
13 one thing that was mentioned in our application
14 was a possibility of a code amendment should the
15 Board see fit to explore such an amendment. That
16 would be one possibility, but of course that is
17 not for us to speculate on."

18 The evidence suggests - sorry, that's the end of the
19 quote.

20 The evidence suggests that in some cases, because of
21 the sequential nature of the required steps for some
22 projects, the timelines may simply be too aggressive,
23 regardless of the resources that are added to attempt to
24 mitigate. While Board Staff understands that the Panel
25 cannot decide upon or require a Distribution System Code
26 amendment process to be initiated, that process may
27 ultimately be necessary and would involve a broader cross-
28 section of LDCs, industry and others.

1 It's Board Staff's view that by narrowing the
2 exemption to the specific group that seems to be causing
3 the greatest incidence of non-compliance and providing some
4 relief to Hydro One on these timelines for this period, it
5 may or may not become apparent that a further code
6 amendment process is needed. In other words, what we have
7 tried to do here is address what we see as the tension to
8 determine whether, over a six-month period, compliance can
9 be achieved, or something very close to compliance can be
10 achieved.

11 In other words, if by providing the relief that the
12 Board Staff is suggesting, Hydro One is better able to meet
13 the timelines as specified and is also better to manage its
14 backlog, then perhaps a more permanent solution doesn't
15 need to be found.

16 Unless there are any questions, those are Board
17 Staff's submissions.

18 MS. HARE: I have one question, but I may have missed
19 it.

20 Some of your steps are similar to what we heard from
21 Mr. Myers, but one issue that I don't think you commented
22 on was this idea of a forum to discuss the screening; is
23 that what you meant by "technical limits"?

24 MS. SEBALJ: No.

25 MS. HARE: Do you have an opinion on the idea of a
26 forum to review that?

27 MS. SEBALJ: I don't think it's a bad idea that the
28 Board would initiate that kind of process.

1 I deliberately stayed away from that topic because it
2 had been discussed as out of scope, but it clearly is
3 something that is causing friction between Hydro One and
4 the industry.

5 So it seems to me that the Board could take leadership
6 and require Hydro One to create a forum for discussion
7 around that.

8 MS. HARE: Thank you. Just one other question, sorry.

9 On this sample reporting, if the Board does accept
10 your proposal, the second line, 15 days, site visit
11 required, would that become 30 days, then?

12 MS. SEBALJ: Yes, sorry. It's just as a general
13 category, but for the purpose of the six months, yes.

14 MS. HARE: I just wanted to make sure I understood
15 what was being suggested. Thank you.

16 MS. CHAPLIN: Should we give that an exhibit number?

17 MS. SEBALJ: Yes. It will be K2.1.

18 **EXHIBIT NO. K2.1: BOARD STAFF PROPOSAL.**

19 MS. CHAPLIN: Mr. Engelberg, are you ready to go now?
20 Do you need additional time?

21 MR. ENGELBERG: I am ready to go now, in view of the
22 late hour.

23 MS. CHAPLIN: Excellent.

24 **FURTHER SUBMISSIONS BY MR. ENGELBERG:**

25 MR. ENGELBERG: I would like to deal first with the
26 matter that was raised in final submissions regarding the
27 public interest.

28 I submit that Hydro One has clearly shown that its

1 request is in the public interest, having regard to the
2 objectives of the Board, and I would like to deal with the
3 negative of that first.

4 The evidence has shown, in my submission, that there
5 would be no benefit to the public interest or indeed to the
6 microFIT process to the find Hydro One to be out of
7 compliance with the requirements of its licence.

8 I would also point out that a number of the
9 intervenors themselves testified that they would see no
10 benefit or little benefit in finding Hydro One to be non-
11 compliant and in not granting the exemption, because it
12 would not solve the problem. What the intervenors were
13 looking for is solutions, not penalties, not non-
14 compliance.

15 In my submission, on the contrary, a six-month
16 exemption would provide Hydro One with a period to work
17 toward compliance and bring itself into compliance, which
18 is in the public interest.

19 Hydro One's application would also protect the
20 interests of consumers, which is another one of the matters
21 listed in section 1 sub (1) of the OEB Act, in its list of
22 the objectives of the Board. It would protect the
23 interests of consumers with respect to reliability and
24 quality of electricity service.

25 There has been ample testimony given as to how
26 important it is to the operation of the system and to the
27 assessment of new proposed connections that they be in
28 compliance with all requirements for reliability and

1 quality of electrical service.

2 It would also, in my submission, promote cost-
3 effectiveness. Hydro One is responsible for the safe
4 operation of its system, and the reliability and quality of
5 electrical service. So to provide Hydro One with the
6 ability to do the assessments it needs to do without
7 breaching the terms of its licence will enable Hydro One to
8 do that.

9 In addition, I would point out that ample evidence was
10 provided, in both the prefiled evidence and in the
11 testimony of the Hydro One witnesses, to show that the six-
12 month exemption would assist Hydro One, not deter Hydro One
13 from accommodating the connection of renewable energy
14 generation facilities, which is yet another one of the
15 elements in the OEB Act regarding the objectives of the
16 Board.

17 So I think I have dealt with the public interest
18 matter.

19 Another matter that was raised during final argument
20 was the matter of penalties, compliance and enforcement.
21 In addition to what I have already said about the
22 participants in this hearing having indicated that they are
23 more concerned with what Hydro One does to bring itself
24 into compliance rather than in punishment, I would like to
25 point out that this application before the Board and this
26 hearing before the Board is not a compliance hearing and
27 not an enforcement hearing.

28 Perhaps at some future date, if the Board decides it

1 would be appropriate to take proceedings against Hydro One,
2 there are ample policies within the Board's rules on what
3 can be done regarding compliance and enforcement. There is
4 a whole process set out. Parties are given the opportunity
5 to provide their rationale, their justification, their
6 defences, and this proceeding is not the appropriate
7 proceeding to do that in.

8 I would like to do a little bit of housekeeping here
9 regarding something I submitted in Hydro One's final
10 argument regarding actual numbers. I know we have heard a
11 lot of numbers for the last few days, but I would like to
12 correct some of the numbers I gave.

13 I am told -- I was told during the break that the
14 number of microFIT applications to the OPA by August the
15 5th totalled 34,000. Of those 34,000, 22,377 were destined
16 for Hydro One's service territory, and the total approved
17 to date by Hydro One -- excuse me, applied to Hydro One to
18 this date are 17,000.

19 Now, if I can refer to a couple of other matters that
20 were mentioned in final argument by other participants.
21 There was a mention of the screening tool and there seemed
22 to be some outrage, if I can suggest that word, that Hydro
23 One did not consult with the solar industry and the
24 microFIT industry, in general, regarding the development of
25 the screening tool.

26 In my respectful submission, the screening tool was
27 developed by Hydro One in order to process applications, in
28 order to evaluate their effect on the safety and operation

1 of Hydro One's system. There is no requirement on Hydro
2 One's part to consult with stakeholders in the development
3 of such a tool. Hydro One has not done so in the past, and
4 I would suggest that the Board would be breaking new ground
5 if it would find that Hydro One had some obligation to do
6 such consultation prior to evaluating the effect of
7 connections on its system.

8 I would also like to point out that some intervenors
9 seem to question the ability or the authority of Hydro One
10 to assess or screen micro-embedded generation applications.
11 I think it was even suggested that they should be done
12 without assessment.

13 I would like to point out that Hydro One derives its
14 authority to assess and screen micro-embedded generation
15 applications from sections 3.1.1 and 4.1.8 and 4.2.4 of the
16 Distribution System Code.

17 In addition, Hydro One's conditions of service, which
18 are issued under the authority of the Ontario Energy Board,
19 section 3.5(c) states that:

20 "All proposed embedded generation facilities
21 regardless of size will undergo an assessment
22 process to ensure that there are no system
23 constraints and that capacity is available."

24 And I would suggest that we can all understand why
25 there is such authority given to Hydro One in the
26 Distribution System Code and why that section does appear
27 in the conditions of service. It's necessary not only for
28 the operation of the new connections, but also for the

1 effects on Hydro One's existing customers, whether load
2 customers or existing generation customers.

3 Finally in that regard, in its comments in EB-2008-
4 0102, Hydro One stated at that time that there needs to be
5 assessment for micro-embedded generator connections, as
6 well. I believe it was Mr. Carten who suggested in his
7 final argument -- he used the word "crashed". He said that
8 the program has crashed.

9 In my respectful submission, we have heard nothing
10 over the past two days to state that the program -- to make
11 anybody conclude that the program has crashed. The very
12 fact that thousands of applications have been received and
13 thousands have been offered connections show that the
14 program has not crashed.

15 I think what we have here, what I have heard several
16 times yesterday and today, is that many intervenors
17 complained about delays in meeting the timelines in the two
18 sections that Hydro One is requesting exemptions from, but
19 what I really heard over and over again, that it's not the
20 delay in meeting the timelines that's the real concern.

21 It's the refusals that Hydro One sends out or that
22 other LDCs may send out. It's the refusals that are
23 alleged to be harming the industry and lowering the profits
24 of generators, and lowering the expectations -- excuse me,
25 lowering the expectations and profits of the solar
26 companies and of the generators.

27 I would submit that a review of the transcript and the
28 prefiled evidence shows that there has been no convincing

1 evidence provided to the Board that Hydro One is rejecting
2 projects on grounds of time constraints, or arbitrarily.

3 The uncontroverted evidence provided by Hydro One and
4 its witnesses is that Hydro One rejects applications only
5 when the capacity is constrained, when there is a lack of
6 system assets in the particular location, and out of
7 concerns for other customers and the safe operation of its
8 systems.

9 What I did not hear intervenors say is that they are
10 prepared to do what the market situation seems to be
11 saying. I think everybody recognized that at the beginning
12 there were very few refusals. As the thousands of
13 applications flooded in, more and more areas of the
14 province became constrained.

15 And saying "more and more areas of the province" is
16 being very loose with the wording. I think the map at page
17 14 of Hydro One's prefiled evidence shows that applicants
18 are going practically to one or two places, primarily.

19 What the intervenors did not say they are prepared to
20 do is to go to places in the province where LDC assets,
21 whether they be Hydro One's assets or others, would enable
22 connections rather than refusals.

23 Again, I repeat that the map on page 14 seems to show
24 that everyone wants to go to one or two of the same places,
25 and Hydro One's witnesses I would suggest were
26 uncontroverted in their testimony throughout that they do
27 not reject applications for anything other than system
28 constraints or a lack of assets in a particular location.

1 They don't reject them out of convenience. They don't
2 reject them out of expediency, and, in fact, they even
3 stated that they go back to existing applications which
4 were not able to connect to see if something can be done
5 later on to connect them if some capacity opens up.

6 And in our respectful submission, those are not the
7 actions of a utility who is trying to find a reason not to
8 comply with the Green Energy Act and not to connect
9 renewable generation.

10 Mr. D'Arcey stated several times during his testimony
11 that Hydro One is committed to renewable generation
12 throughout the province, and has done and will continue to
13 do everything it can to facilitate such connections.

14 Those are our submissions.

15 MS. CHAPLIN: It's late in the day for me to be asking
16 this, but I am going to go ahead anyway.

17 This reference to the fact that Hydro One has received
18 to date 17,000 applications for microFIT, I am just
19 wondering if one way of putting this in a little bit of
20 perspective -- and I suspect you don't have this number to
21 hand, but I don't know if it will be in one of our
22 statistical yearbooks -- what Hydro One's load connections
23 were in 2009 or 2010.

24 MR. ENGELBERG: Perhaps I can confer and see if
25 someone is aware of that.

26 [Mr. Engelberg confers with Hydro One representatives]

27 MR. ENGELBERG: With no intent to slight the people
28 who are with me today, they assure me that they are not

1 experts, but that they are aware that historically the load
2 connection applications have been 16- to 18,000 per year.

3 MS. CHAPLIN: Okay. Thank you. I think that will do
4 it for me, as well.

5 So I think that brings us to a close for this
6 proceeding. I believe we have all of the undertakings; is
7 that correct?

8 So I would like to thank all the participants for
9 their contributions, and the court reporter and Staff.

10 And we are not going to issue a decision today, but we
11 will do so in due course.

12 Thank you very much.

13 --- Whereupon the hearing concluded at 4:52 p.m.

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