

Ministry of the
Attorney General
Constitutional Law Branch

720 Bay Street, 4th Floor
Toronto ON M7A 2S9
Tel: (416) 326-0131
Fax: (416) 326-4015
arif.virani@ontario.ca

Ministère du
Procureur général
Direction du droit constitutionnel

4^è étage, 720 rue Bay
Toronto ON M7A 2S9
Tél.: (416) 326-0131
Télé.: (416) 326-4015



September 20, 2011

Ms. Kirsten Walli, Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Walli:

RE: Motion by the Consumer's Council of Canada ("CCC") in relation to s. 26.1 of the *Ontario Energy Board Act, 1998* (the "Act") and Ontario Regulation 66/10 Board File No.: EB-2010-0184

Please find attached the Motion Record of the Intervenor, Attorney General of Ontario for the Hearing on the Merits, scheduled for October 6, 2011.

Yours truly,

A handwritten signature in black ink, appearing to read "Arif Virani".

Arif Virani
Counsel

AV/gb

cc: Robert Warren (by email)
Mahmud Jamal (by email)
All Intervenors (by email)

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 a motion by the Consumers Council of
Canada and Aubrey LeBlanc in relation to section 26.1 of the *Ontario
Energy Board Act, 1998* and Ontario Regulation 66/10.

**MOTION RECORD OF THE INTERVENOR,
THE ATTORNEY GENERAL OF ONTARIO**

MINISTRY OF THE ATTORNEY GENERAL

Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto ON M7A 2S9
Fax: 416-326-4015

Robert E. Charney – LSUC #23652S
Tel: 416-326-4452
robert.charney@ontario.ca

Arif Virani – LSUC #44463H
Tel: 416-326-0131
arif.virani@ontario.ca

Robert Donato – LSUC #44544F
Tel: 416-326-4473
robert.donato@ontario.ca

Counsel for the Intervenor,
The Attorney General of Ontario

TO:

Robert B. Warren

Weir Foulds LLP
The Exchange Tower, Suite 1600
130 King Street West
Toronto ON M5X 1J5

Tel: 416-365-1110
Fax: 416-365-1876
rwarren@weirfoulds.com

Counsel for the Moving Party,
The Consumers Council of Canada and Aubrey Leblanc

AND TO:

Mahmud Jamal

Geoffrey Grove

Osler Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8
Tel: 416-862-6764/4264
Fax: 416-862-6666
mjamal@osler.com
ggrove@osler.com

Counsel for the Ontario Energy Board Staff

Peter C.P. Thompson, Q.C.

Borden Ladner Gervais LLP
Barristers & Solicitors
1100-100 Queen St.
Ottawa, ON K1P 1J9
Tel: 613-787-3528
Fax: 613-230-8842
pthompson@blgcanada.com

Counsel for the Intervenor,
The Canadian Manufacturers and Exporters

George Vegh

McCarthy Tetrault LLP
Toronto Dominion Bank Tower
Suite 4700, Box 48
Toronto ON M5K 1E6
Tel: 416-601-7709
Fax: 416-868-0673
gvegh@mccarthy.ca

Counsel for the Intervenor
Union Gas Limited

Michael Janigan

Public Interest Advocacy Centre
1204-One Nicholas Street
Ottawa ON K1N 7B7
Tel: 613-562-4002, ext. 26
Fax: 613-562-0007
mjanigan@piac.ca

Michael Buonaguro

Public Interest Advocacy Centre
1102-34 King Street East
Toronto ON M5C 2X8
Tel: 416-767-1666
Fax: 416-348-0641
mbuonaguro@piac.ca

Counsel for the Intervenor
Vulnerable Energy Consumers Coalition

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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 a motion by the Consumers Council of Canada and Aubrey LeBlanc in relation to section 26.1 of the *Ontario Energy Board Act, 1998* and Ontario Regulation 66/10.

AFFIDAVIT OF BARRY BEALE
Sworn November 5, 2010

I, Barry Beale, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am employed by the Ministry of Energy ("Ministry") as the Director—Energy Efficiency and Innovative Technology Branch, Renewables and Energy Efficiency. I have been so employed with the Ministry and the former Ministry of Energy and Infrastructure holding various positions of increasing responsibility for the past four years, and also during the thirteen year period from 1984 to 1997. Because of this experience, I have personal knowledge of the facts set out in this Affidavit, unless stated to be based on information and belief, and where so stated I believe such facts to be true.
2. In my capacity as Director—Energy Efficiency and Innovative Technology Branch, Renewables and Energy Efficiency, my duties have included providing policy recommendations and advice to the Assistant Deputy Minister—Renewables and Energy Efficiency, the Deputy Minister and the Minister of Energy and Infrastructure, the Minister of Energy, and Cabinet as a whole on various matters pertaining to energy in Ontario. In addition, I served as the Acting Assistant Deputy Minister—Renewables and Energy Efficiency, from November 2009 to May 2010.
3. I have, in particular, had occasion to provide advice in order to assist the Government in implementing its policy decisions relating to conservation and the use of alternative and renewable energy programs.

4. I swear this Affidavit in response to the motion made by the Consumers Council of Canada and Aubrey Leblanc, alleging that the assessments levied by the Ontario Energy Board ("Board"), pursuant to s.26.1 of the *Ontario Energy Board Act, 1998* ("OEBA") and O.Reg. 66/10 thereto, amount to unconstitutional indirect taxation.
5. Ontario has adopted conservation as the accepted strategy for improving the reliability of its electricity system, and as a means of reducing the costs associated with energy generation. The province's approach to energy conservation is multi-faceted, and includes a number of programs within a broad regulatory scheme. Two components of Ontario's regulatory scheme include the Home Energy Savings Program (HESP) and the Ontario Solar Thermal Heating Incentive (OSTHI). In this case, the charge assessed by the Ontario Energy Board is intended solely to recoup the direct incentive costs incurred by the province in providing the HESP and OSTHI programs. This regulatory charge is based solely on cost-recovery – it is neither intended or designed to generate revenue for the Government.

I. Complete, Complex and Detailed Code of Regulation

6. Ontario has set aggressive electricity conservation targets. Building a culture of conservation has required the Government to change its methods in order to meet these goals and become, globally, a best practice jurisdiction in reducing energy consumption.
7. In 2004, the Government took significant steps toward meeting these conservation objectives. The Government addressed long-term system planning and system reliability concerns through the enactment of the *Electricity Restructuring Act, 2004* ("ERA").
8. Central to the passage of the ERA was the creation of the Ontario Power Authority ("OPA"), which was mandated to prepare an Integrated Power System Plan to integrate supply, transmission and conservation planning for a 20 year period in Ontario.
9. The Integrated Power System Plan submitted to the Ontario Energy Board for approval in August 2007 was premised upon several core principles, including those addressing conservation and renewable generation, namely: (1) the creation of a conservation culture in

Ontario; (2) a strong preference for renewable sources of energy; and (3) the replacement of coal-fired generation.

10. The changes ushered in by the passage of the ERA in 2004 comprise only one part of Ontario's complete, complex and detailed code of energy regulation. The province's regulatory scheme also includes:

- (1) the *Green Energy and Green Economy Act, 2009* [Bill 150] ("GEGEA") pursuant to which the *Green Energy Act, 2009* (GEA), *inter alia*, was created;
 - One of the purposes of the GEGEA is to reinforce the Government's long-standing commitment to reducing electricity demand and fostering a culture of conservation throughout Ontario. The GEGEA encourages the use of cleaner energy sources including wind, solar, water and bio-fuels;
 - The GEA provides regulatory authority to designate certain goods, services and technologies for the purpose of promoting conservation;
- (2) the OEBA, including its conservation-related directive authorities, and the Board's licensing authorities and licensing requirements; and
- (3) the *Electricity Act, 1998*, including provisions related to supply and capacity procurement initiatives;
 - For example, the *Electricity Act, 1998* was recently amended at s. 25.32(4.1) to grant authority to the Minister to direct the OPA regarding the procurement of electricity supply in relation to renewable energy sources, and conservation initiatives. Other provisions of this legislation authorize the Minister to require transmitters and distributors to grant preferential access to renewable generation facilities, even where non-renewable and renewable generation facilities are competing for scarce connection resources (s. 25.36).

11. Ontario's complex and detailed code of regulation is complemented by a number of additional requirements created by the Board and the Independent Electricity System Operator (IESO) with which industry participants must comply. These include Board codes created under sections 70.1 *et seq.* of the OEBA, such as the Transmission System Code, the Distribution System Code and the Retail Settlement Code, as well as the IESO Market Rules created under sections 32-34 of the *Electricity Act, 1998*.

12. These instruments supplement the *Electricity Act, 1998*, the OEBA and their respective regulations. They are supported by a network of agencies and industry participants (OEB, OPA, Local Distribution Companies (“LDCs”), gas utilities, the IESO and others) which themselves carry out conservation initiatives, and often maintain their own rules and programs to achieve conservation.

II. HESP and OSTHI: Multi-Fuel Programs with a Regulatory Purpose that seek to Affect Behaviour

13. The conservation measures that form part of Ontario’s detailed code of regulation emphasize a multi-fuel approach--the programs’ eligibility criteria permit users of electricity, natural gas and other fuels to participate. The two fuels for which the Board maintains a regulatory or rate-setting power are electricity and natural gas.
14. In the April 1, 2009 to March 31, 2010 fiscal year, the Ministry delivered two energy conservation programs: HESP and OSTHI. Both programs originated with and are administered under a Memorandum of Understanding by Natural Resources Canada (NR Can), pursuant to the federal government’s ecoEnergy-Homes program, and ecoEnergy-Renewable Heat program, respectively. To administer program funding between the federal and provincial governments, lists of approved applications are submitted to Ontario by NR Can, where they are processed. Ontario then remits incentive cheques to qualified applicants matching payments made by the federal government.
15. The federal government has indicated that funding for both the ecoEnergy-Homes program and the ecoEnergy-Renewable Heat program will conclude as of March 31, 2011. The funding authority for the existing Ontario matching programs will also sunset on March 31, 2011.

(a) *The Home Energy Savings Program (HESP)*

16. HESP provides an incentive to residential homeowners to reduce their use of electricity and other fuels. HESP subsidizes a home energy audit for 50% of the cost of the audit up to \$150. Subsidies are then paid to homeowners who implement energy improvements recommended by

the audit. The program also includes a prescribed list of conservation measures and the corresponding incentives that are available.

17. For example, installing Energy Star qualified windows results in a \$60 per unit Ontario incentive. Other popular program conservation measures include installing high-efficiency gas furnaces and making insulation upgrades. Details regarding HESP are contained in the brochure attached as EXHIBIT "A" to my Affidavit.

18. As of August 2010, Ontario home owners had completed approximately 380,000 home energy audits under HESP. (See EXHIBIT "B" attached to my Affidavit.)

(b) The Ontario Solar Thermal Heating Incentive (OSTHI)

19. OSTHI provides a rebate to organizations in commercial, industrial or institutional sectors that install a qualifying solar air or water thermal heating system, and thereby reduce their demand for electricity and other fuels. OSTHI matches rebates provided by the federal government's ecoENERGY-Renewable Heat program to a maximum incentive of \$400,000 per solar thermal water installation and \$80,000 per solar thermal air installation. (The corporate maximum incentive for multiple installations is \$2,000,000.) Ontario's collaboration with the federal government facilitates service to Ontario applicants who plan to install a qualifying system at an eligible property.

20. OSTHI incentive payments are based on the size (area) of the solar collector and its efficiency. Total project funding payable to 'for-profit' applicants is limited to 50% of eligible costs, while municipalities and 'not-for-profit' applicants may receive no more than 100% of eligible project costs from all levels of government.

21. Funding is conditional upon the applicant's project being approved by the federal government's ecoENERGY-Renewable Heat program and on compliance with the Contribution Agreement. An applicant has six months to complete the project once it has been approved. Additional details regarding OSTHI are contained in the brochure attached as EXHIBIT "C" to my Affidavit.

22. The objective of the HESP and OSTHI programs, is to alter the behaviour of consumers by providing incentives to reduce energy consumption. Through the financial rebate regimes set out above, the Government of Ontario provides a monetary inducement to consumers to reduce their reliance on non-renewable energy sources, and stimulates energy conservation.
23. Programs such as HESP and OSTHI are two examples of the various measures that the Government of Ontario has undertaken in order to foster a culture of conservation and to support overall system reliability at the transmission and distribution levels.

III. Regulated Entities Cause the Need for, or Derive a Benefit from, the Regulation

Grid Reliability

Need created by Consumers; Benefit accrues to Consumers, LDCs and the IESO

24. Conservation programs are an industry-accepted strategy for improving system reliability, and avoiding the costs of more expensive energy generation. In this respect, conservation can be considered the primary resource for addressing supply and distribution constraints.
25. Through their consumption of electricity, consumers place significant demands on the electricity grid, which can compromise its reliability under certain circumstances. Reducing electricity consumption through programs like HESP and OSTHI reduces the stress on the electricity system. The result is a system benefit which accrues to all consumers, LDCs and the IESO.
26. The need to ensure system reliability has been constant, and arose prior to the GEGEA initiatives. In 2002, increased levels of demand were placed on the grid by large industrials, residential and small business consumers, due in part to extreme weather conditions. In addition, certain of Ontario's nuclear generation facilities were unavailable because of ongoing maintenance and performance issues. These factors combined to create record-high system demands, which resulted in increased prices for electricity and warnings of potential blackouts and brownouts. The following year, Ontario experienced the August 14, 2003 blackout. The

cumulative effect of these events reinforced the importance of system reliability and the need to reduce electricity demand.

27. Modest reductions in consumption associated with Ontario's conservation programs improve system reliability because they decrease the likelihood that short-term energy demand spikes will undermine system-wide or local distribution system reliability.
28. Through consumption, each customer group places their own unique demands upon the system. For example, although large industrial consumers have relatively stable system load profiles and consume base-load generation which is relatively less expensive and does not normally challenge the outer limits of system reliability, they consume volumes that on average dwarf the amounts consumed by other customer classes. Other groups, such as the residential and small business customer classes, have more variable system demand. While the volume of energy each consumer uses is individually quite small, they consume a significant volume of energy as a class and consume in ways that drive system demand toward peak capacity.
29. Consumers (including individuals, small businesses and large industrial consumers) benefit from increased grid reliability by receiving stable electrical supply during all periods of the day, month or year including peak demand periods. Business, manufacturing, technology and other industrial sectors need reliable supply in order to support both short-term and long-term business operations. Residential and small business consumers depend on adequate and reliable supply in order to meet their daily energy consumption needs.
30. LDCs are licensed by the Board to convert electricity from the transmission system into lower voltages (less than 50 kV) and to distribute that electricity to small/individual consumers. There are approximately 80 LDCs across the province, servicing all Ontario consumers, save for the approximately 60 large industrial consumers whose electricity needs are serviced directly by the IESO.
31. LDCs play a significant role within this regulated industry as suppliers of the energy demanded by consumers. Particularly at times when electricity consumption peaks, it is critical for LDCs to have access to a stable, reliable grid in order to supply electricity to their consumers. LDCs

benefit significantly from improved grid reliability, as system failures would affect the viability and profitability of their entire operations. Even a short term breakdown of the transmission and distribution grid would prevent LDCs from delivering electricity to their customers, resulting in adverse economic consequences.

32. As commercial actors supplying electricity within a regulated electricity distribution system, LDCs require a reliable transmission and distribution grid, and therefore derive a critical benefit from regulatory measures intended to ensure the grid's reliability and viability.
33. The IESO serves as the not-for-profit system operator responsible for supervising all activity which occurs on the IESO-controlled grid, including the electricity transmission system from a supply/demand perspective. In this capacity, the IESO services the electricity needs of LDCs, as well as a small number of large industrial operators who require higher voltages (more than 50 kV) and are therefore connected directly to the transmission grid, as noted above.
34. The IESO also benefits from the HESP and OSTHI programs because, in improving grid reliability, these conservation measures assist the IESO in complying with its statutory mandate. As s. 5 of the *Electricity Act, 1998* sets out, the IESO's objects include maintaining the reliability of the grid, and ensuring the adequacy and reliability of the integrated power system.
35. Particularly at times when electricity consumption peaks, it is critical for the IESO to ensure the stability and reliability of the grid in order to supply electricity to their own transmission-connected consumers, as well as the LDCs. The IESO therefore derives significant benefits from improved grid reliability, as system failures affect the viability of both their system operations function as well as their ability to serve their customers, and the LDCs.

Environmental Concerns

Need created by Consumers

36. The generation of electricity from fossil fuels has a detrimental impact on the environment by emitting pollutants, including greenhouse gases. The need to keep consumers' electricity

consumption in check in order to protect the environment necessitates the conservation and renewable energy programs the Ministry has initiated as part of the GEGEA.

37. Ontario's conservation measures address the environmental impacts of energy consumption, by focussing on the type or source of energy generated as well as the volume of consumption.
38. Ontario has taken steps toward the use of more environmentally benign resources, including deciding to close all of Ontario's coal-fired generation facilities by the end of 2014. The elimination of coal from Ontario's supply mix will reduce Ontario's annual greenhouse gas emissions by up to 30 mega tonnes annually.
39. As a consequence of the closure of Ontario's coal-fired generation facilities, there will be a reduction of approximately 6434 Megawatts (or some 18%) in the province's overall electricity generation supply mix. To be responsive to this supply reduction, the province will rely on energy conservation among other strategies.
40. The HESP and OSTHI programs are examples of conservation measures that have been implemented by the Government to respond to the environmental consequences of the extra demands placed on the system by consumers.
41. In particular, the OSTHI program eligibility rules are designed to allow commercial, institutional and industrial consumers to satisfy a portion of their demand using solar energy rather than relying upon electricity or other fuels.

Reduced Costs

Consumers, LDCs and the IESO derive a Benefit

42. Over time, a reduced requirement for generation resources results in a more affordable and reliable system for consumers.

43. Load reduction reduces Ontario's reliance upon coal. Where HESP and OSTHI result in load reduction during peak demand periods, incidental benefits accrue since more system demand can be satisfied using non-peak resources which are less expensive.
44. In addition, consumers in every class who consume less electricity will reduce their overall electricity expenses, resulting in obvious economic benefits for the consumer.
45. The benefits to each residential consumer, depending upon their personal investment in their individual home under the HESP, are notable. Eligible consumers who participate in the program received funding toward the costs associated with implementing in-home conservation measures which increase the value of their homes, in addition to lowering their long-term energy costs.
46. All consumers are expected to benefit from the overall reduction in consumption, including demand reduction during peak periods in winter months. Lower overall peak consumption will result in lower commodity prices. The IESO market price corresponds to the marginal cost associated with the last generation facility required to satisfy peak system load.
47. As the consumption of electricity is reduced, the price of electricity for the consumer will also diminish. This applies notwithstanding the fact that a consumer's total electricity bill is comprised of more than just the commodity cost of electricity -- it includes regulatory, delivery and administrative charges.
48. Conservation and demand reduction programs, such as HESP and OSTHI, provide relief compared to typically more expensive system upgrades and expansion, given the advanced age of Ontario's electricity generation assets. Conservation defers the need for investment that would otherwise be necessary to maintain and increase infrastructure, to supply and transmit electricity in response to elevated demand. By working to avoid or lower these costs, the regulation economically benefits consumers—the party that would ultimately bear the expenses related to costly system upgrades through rate changes set by the Board.
49. The regulation also results in economic benefits for LDCs and the IESO, as these parties frequently must bear the immediate short-term costs and financing associated with

infrastructure improvements and expansion. By deferring the need for such upgrades, conservation can positively influence the overall business efficiency of LDCs and the IESO.

50. In addition, by reducing demand during peak periods, conservation measures can benefit LDCs and the IESO in the form of reduced system losses.

IV. Actual or Properly Estimated Costs

51. Section 26.1 of the OEBA requires the Board to issue special purpose “assessments” or charges to recover specific costs of the Ministry relating to energy conservation programs or renewable energy programs. The charges are initially imposed on LDCs and the IESO, as regards electricity consumers in their service areas. Each LDC and the IESO pays its share of the total program costs on the basis of the volume of electricity delivered to electricity consumers.
52. Under Regulation 66/10 (“Assessment for Ministry of Energy and Infrastructure Conservation and Renewable Energy Program Costs”) (“Regulation”), LDCs and the IESO may recover the amount of the charges from electricity consumers in accordance with the amount of electricity used by each consumer. Both LDCs and the IESO have already utilized this authority and commenced recovering the regulatory charge from electricity consumers they supply. Such recovery from consumers must be recorded in a Variance Account in accordance with s.8 of the Regulation. The first reports regarding the Variance Account will be available from the Board at the end of November 2010.
53. The Regulation stipulates that the total amount of costs to be recovered by the Board’s assessments is \$53,695,310. This figure corresponds to the estimated total annual cost for the April 1, 2009 to March 31, 2010 fiscal year of the two specific energy conservation and renewable energy programs delivered by the Ministry discussed above, HESP and OSTHI. This amount excludes the costs related to the conservation measures of fuels other than electricity.

54. The sole purpose of the regulatory charge assessed against LDCs and the IESO, and recoverable from electricity consumers, is to recover the direct electricity incentive costs incurred by the Government in providing the HESP and OSTHI conservation programs.
55. The regulatory charges have been set at a rate intended to recover only those direct incentive costs.
56. The regulatory charges are not intended to generate additional revenue for the Government of Ontario. To the extent that excess regulatory charges were recovered for the April 1, 2009 to March 31, 2010 fiscal year, this is a reasonable by-product of the cost-estimation process. The excess recovery in 2009/10 amounted to \$2,441,409 or 4.55% of the overall amount recovered. All excess regulatory charges are maintained in a special purpose account as defined in the *Financial Administration Act*, and may only be employed for the "special purposes" set out in s.26.2 of the OEBA, including, *inter alia*, the funding of conservation or renewable energy programs.
57. For the April 1, 2009 to March 31, 2010 fiscal year, which corresponds to the period for cost recovery in the Regulation, the Ministry took the following steps to ensure a thorough and rigorous cost estimation methodology:
- (1) The Ministry estimated the amounts to be spent in the HESP and OSTHI programs and excluded those costs related to overhead, administration, etc., which were funded from the Ministry's own budget. The Ministry apportioned this amount into 2 general categories: electricity and other fuels; (See TABLE 3, attached as an Appendix to my Affidavit)
 - (2) The apportionment was based on the type of fuel displaced. If incentives were provided to an applicant to install a measure which reduced consumption of one fuel, the cost was apportioned to that fuel.
 - For example, if \$250 in incentives was paid to an applicant to replace an old and inefficient air conditioner with a new one in order to decrease the consumption of electricity, \$250 was added to the amount charged to electricity. If the fuel

displaced was not electricity, the incentive paid was added to the "other fuels" category. Other fuels may include natural gas, coal, wood, propane, fuel oil, etc.. (See TABLE 3, attached as an Appendix to my Affidavit)

- (3) The costs recovered under O.Reg. 66/10 relate only to the amounts allocated to electricity consumers based on their proportionate share of the total costs associated with HESP and OSTHI. Costs apportioned to "other fuels" consumers are excluded from these amounts.
 - In the April 1, 2009 to March 31, 2010 fiscal year, the Ministry funded the full amount apportioned to "other fuels" from its own budget. (See TABLES 1, 3 and 4, attached as an Appendix to my Affidavit)
- (4) Following the model employed by the federal government (NR Can, Office of Energy Efficiency) special rules of apportionment were employed when a single conservation measure affected several fuels.
 - For example, insulating the residential building envelope of a home may displace gas and electricity depending on the methods used to heat the home, and will displace electricity in the summer if the home is air conditioned. Incentives paid out to applicants related to building insulation have been apportioned to electricity, and natural gas and other fuels, based on estimates of reduced consumption for each of those fuels. (See SAMPLE PROJECTS 1 and 2, attached as an Appendix to my Affidavit).
- (5) Where the energy retrofit measure under the HESP reduces the consumption of only one fuel, 100% of the program grant cost is apportioned to that fuel type.
 - For building envelope measures, 90% cost is allocated to heating fuel (natural gas and other fuels, or electricity) and 10% cost is apportioned to cooling fuel (electricity). This apportionment was estimated based on data from NR Can, Office of Energy Efficiency.
 - For measures that do not affect the building envelope, the cost is apportioned to the displaced fuel as determined through applications submitted to the program. (See SAMPLE PROJECTS 1 and 2, attached as an Appendix to my Affidavit)

(6) Charges related to electricity for the April 1, 2009 to March 31, 2010 fiscal year were estimated on December 31, 2009, 3 months prior to the end of the fiscal year in which the charges applied. The estimate used the cost of these programs for the first three quarters of the year (April 1, 2009 to December 31, 2009) as determined from a representative sample of approved applications, together with other inputs, in order to estimate the anticipated cost for the final quarter of the fiscal year.

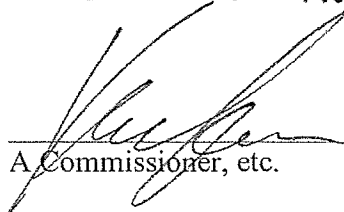
- The total estimated electricity-based cost of the program for the period represented in O.Reg. 66/10 was \$53,695,310, which is reflected in s. 4 of the Regulation. (See TABLES 2 and 3, attached as an Appendix to my Affidavit).

58. The actual cost for the HESP and OSTHI programs for fiscal year 2009/2010 was \$51,253,901.

This amount was determined after the close of the fiscal year and the difference between the actual and estimated costs is maintained in a special purpose account as defined in the *Financial Administration Act*, and may only be employed for the "special purposes" set out in s.26.2 of the OEBA. (See TABLES 4 and 1, attached as an Appendix to my Affidavit.)

59. I swear this Affidavit in response to the Motion by Consumers Council of Canada and Aubrey Leblanc, alleging that the assessments levied by the Ontario Energy Board, pursuant to s.26.1 of the *Ontario Energy Board Act, 1998* and O.Reg. 66/10 thereto, amount to unconstitutional indirect taxation, and for no other or improper purpose.

Sworn before me at the City of Toronto,
this 5th day of November, 2010.


A Commissioner, etc.


Barry Beale

KAREN ANNA BARBARA ENSSLEN, a
Commissioner, etc., Province of Ontario.
while a Student-at-Law.
Expires August 24, 2013.

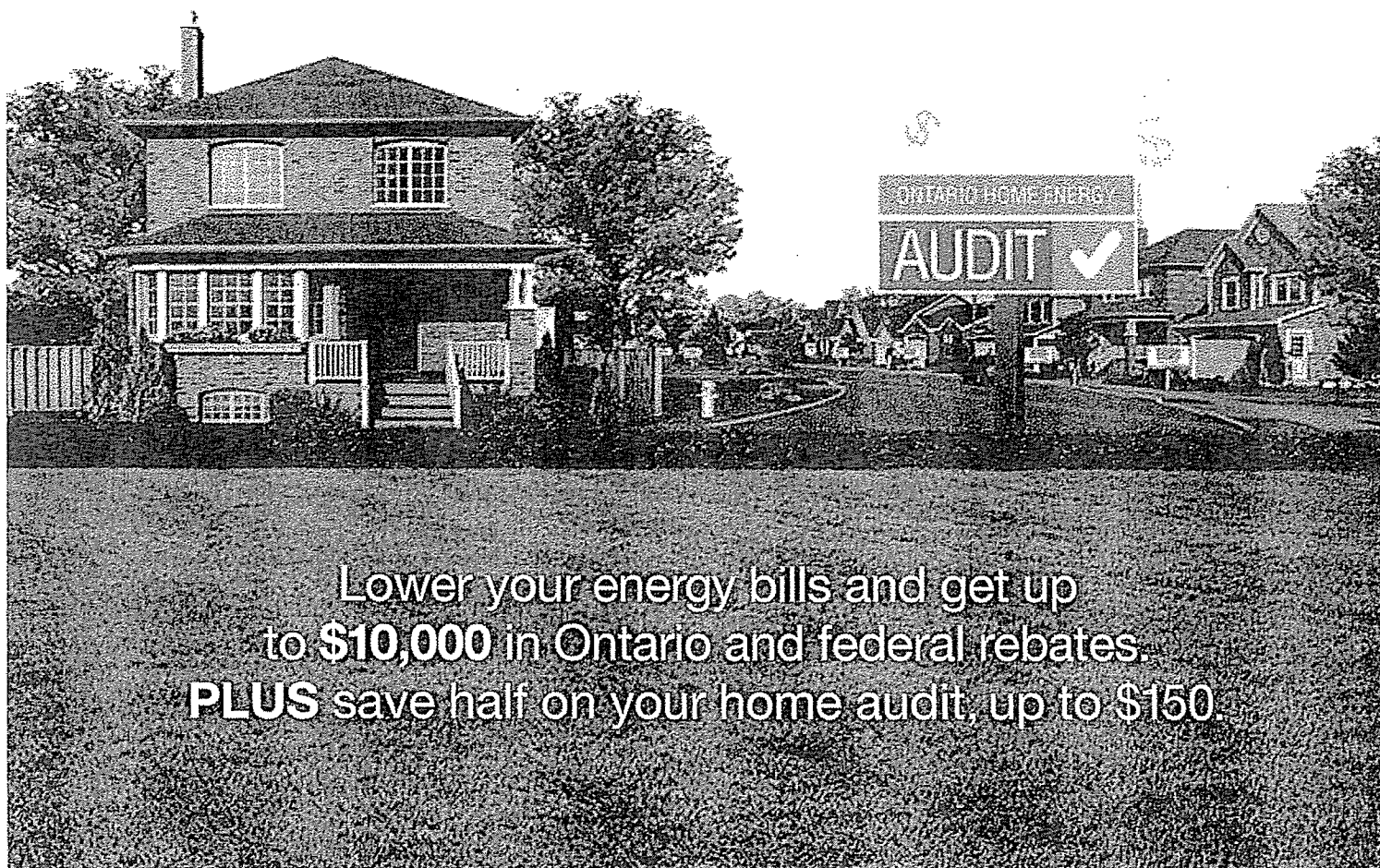
Exhibit "A"

This is Exhibit *A* to the
Affidavit of *Barry Beale*
sworn before me this *5th*
day of *November*, 2010


A Commissioner, etc.

KAREN ANNA BARBARA ENSSLEN, a
Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires August 24, 2013.

It pays to be green.



Lower your energy bills and get up
to **\$10,000** in Ontario and federal rebates
PLUS save half on your home audit, up to \$150.



It pays.

The **Ontario Home Energy Savings Program** will find your home's energy leaks and identify renovations you can make to lower your energy bills by up to 30%. Renovating your home with energy efficient retrofits could earn you up to \$10,000 in Ontario and federal rebates.

The program was created specifically to help homeowners save money, save energy and reduce greenhouse gas emissions. The more energy-saving upgrades you make, the more money you'll get back.



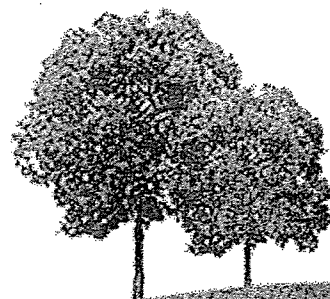
Book your audit at
www.ontario.ca/homeenergy
Paid for by the Government of Ontario

Eligible Improvements and Retrofits – Total Combined Provincial and Federal Rebate Amounts

	Single-Family Home For 1 st System	For 2 nd System	MURB (per building)
✓ Heating System			
An ENERGY STAR® qualified gas furnace that has a 92.0% Annual Fuel Utilization Efficiency (AFUE) or higher.	\$750	\$380	Same as Single Family Home
An ENERGY STAR® qualified gas furnace that has a 92.0% AFUE or higher and a brushless DC motor.	\$1,250	\$630	
An ENERGY STAR® qualified gas furnace that has a 94.0% AFUE or higher and a brushless DC motor.	\$1,300	\$700	
An ENERGY STAR® qualified gas furnace that has a 94.0% AFUE or higher and a brushless DC motor (when installing a condensing furnace for the first time).	\$1,580	\$800	
An ENERGY STAR® qualified condensing gas boiler that has a 90.0% AFUE or higher.	\$1,500	\$750	
An ENERGY STAR® qualified oil boiler that has an 85.0% AFUE or higher.	\$1,500	\$750	
An ENERGY STAR® qualified oil furnace that has an 85.0% AFUE or higher.	\$750	\$380	
An ENERGY STAR® qualified oil furnace that has an 85.0% AFUE or higher and a brushless DC motor.	\$1,250	\$630	
Install an earth-energy system (ground or water source) that is compliant with CAN/CSA-C448 and certified by the Canadian GeoExchange Coalition (www.geo-exchange.ca) -- applies to a new system or a complete replacement.	\$8,750	N/A	
Replace a heat pump unit of an existing earth-energy system (ground or water source). The system must be compliant with CAN/CSA-C448 and certified by the Canadian GeoExchange Coalition (www.geo-exchange.ca). (*per equipment replaced)	\$3,500	N/A	*\$3,500
Replace your existing space and domestic water heating equipment with an Integrated Mechanical System (IMS) that has an overall thermal performance factor of 0.90 or higher. The system must be compliant with the CSA P10-07 standard and meet or exceed the standard's premium performance requirements. (*per equipment replaced)	\$3,250	N/A	*\$3,250
Replace your wood-burning appliance with a model that meets either CSA-B415.1-M92 or the U.S. Environmental Protection Agency (EPA) (40 CFR Part 60) wood-burning appliance standard; an indoor wood pellet-burning appliance (includes stoves, furnaces and boilers that burn corn, grain or cherry pits); or a masonry heater. (*per equipment replaced)	\$750	\$380	*\$750
Replace your solid fuel-fired outdoor boiler with a model that meets CAN/CSA-B415.1 or the U.S. EPA Outdoor Wood-fired Hydronic Heater (OWHH Method 2B) Program, Phase 1. The capacity of the new boiler must be equal to or smaller than the capacity of the boiler being replaced.	\$750	N/A	\$750 (per building)
Install a minimum of 5 electronic thermostats for electric baseboard heaters. Electric baseboard heating must be the primary space heating system. (*for each set of 5 electronic thermostats)	\$80	N/A	*\$80
Install an ENERGY STAR qualified air-source heat pump for both heating and cooling that has a Seasonal Energy Efficiency Ratio (SEER) of 14.5 or higher and a minimum heating capacity of 12,000 Btu/hour. See "Important Information about Air-Source Heat Pumps and Central Air Conditioners." (*per equipment installed)	\$1,000	N/A	*\$1,000

	Single-Family Home For 1 st System	For 2 nd System	MURB (per building)
✓ Cooling System			
Replace your central air-conditioning system with an ENERGY STAR® qualified system that has a SEER of 14.5 or higher (complete system replacement, including indoor coil and outdoor components). See "Important Information about Air-Source Heat Pumps and Central Air Conditioners."	\$500	N/A	\$500 (per building)
Replace your window air conditioner(s) with an ENERGY STAR® qualified unit(s). See "Important Information about Air-Source Heat Pumps and Central Air Conditioners."	\$50 (per unit replaced; maximum of 5 units)	N/A	\$50 (maximum of 2 units per dwelling unit)
✓ Ventilation System			
Install a ventilation system that is certified by the Home Ventilating Institute (HVI) as a heat -- or energy-recovery ventilator. The HVI Product Directory is available at www.hvi.org . (*per equipment installed)	\$750	N/A	*\$750
✓ Domestic Hot Water System			
Install a solar domestic hot water system with solar collectors that meets the CAN/CSA F378.87 standard and provides a minimum energy contribution of 6,000 megajoules per year. For a list of eligible solar collectors, visit www.ecoaction.gc.ca/heat .	\$2,500	N/A	Visit www.ecoaction.gc.ca/heat for more information
Replace your domestic hot water heater with an ENERGY STAR® qualified instantaneous, gas-fired water heater that has an Energy Factor (EF) of 0.82 or higher and is on the ecoENERGY Retrofit -- Homes list of eligible domestic hot water heaters. (*per equipment replaced)	\$630	N/A	*\$630
Replace your domestic hot water heater with an ENERGY STAR® qualified instantaneous, condensing gas-fired water heater that has an EF of 0.90 or higher and is on the ecoENERGY Retrofit -- Homes list of eligible domestic hot water heaters. (*per equipment replaced)	\$750	N/A	*\$750
Replace your domestic hot water heater with a condensing gas storage-type water heater that has a thermal efficiency of 94% or higher and is on the ecoENERGY Retrofit -- Homes list of eligible domestic hot water heaters. (*per equipment replaced)	\$750	N/A	*\$750
Install a Drain-Water Heat Recovery (DWHR) system. Grants are based on the efficiency of the system; determined by an independent testing facility. For a list of eligible systems and their efficiency, go to www.ecoaction.gc.ca/homes and refer to "Questions and Answers." (*per equipment installed)			
• Efficiency between 30.0 and 41.9%	\$190	N/A	*\$190
• Efficiency of 42.0% or higher	\$330	N/A	*\$330

✓ Building Envelope			
When adding insulation to the building envelope, pay special attention to the type and the placement of vapour barriers per local building codes.			
For a multi-unit residential building, the grant for insulation is multiplied by the MURB MULTIPLIER shown at the end of this chart.			



✓ Ceiling Insulation

A minimum of 20% of the total ceiling area must be insulated to qualify. When the roof has more than one type (i.e. attic, cathedral ceiling, flat roof), all applicable grants are pro-rated based on the ceiling area that is insulated. The maximum grant for any combination of attic, cathedral ceiling and flat roof is \$1,500. Grants listed reflect 100% of the ceiling area being of one roof type.

Increase the insulation value of:

	Starting Point		
	Up to R-12	R-12 to R-25	R-25 to R-35
Your attic to achieve a total minimum insulation value of RSI 7 (R-40)	\$1,000	\$500	N/A
Your attic to achieve a total minimum insulation value of RSI 8.8 (R-50)	\$1,500	\$750	\$250
Your flat roof and/or cathedral ceiling to achieve a total minimum insulation value of RSI 5 (R-28)	\$1,500	\$500	N/A

Add a minimum insulation value of RSI 1.8 (R-10) to your uninsulated flat roof and/or cathedral ceiling and qualify for a grant of \$1,000.

✓ Exterior Wall Insulation

Minimum Additional Insulation	% Area	R-3.8 to R-9	Greater than R-9
A minimum of 20% of the total exterior wall area must be insulated to qualify. The grant is based on the percentage of wall area that is insulated and does not include walls between individual dwelling units.	20%	\$450	\$750
	40%	\$900	\$1,500
	60%	\$1,350	\$2,250
	80%	\$1,800	\$3,000
	100%	\$2,250	\$3,750

See "Important Note about Semi-Detached and Row Houses."

✓ Exposed Floor Insulation

Insulate your entire exposed floor and increase its insulation value by a minimum of RSI 3.5 (R-20). A minimum floor area of 14 m² (150 ft²) must be insulated to qualify. **\$380**

✓ Foundation Insulation

When both a basement and crawl space are present, all applicable grants are pro-rated to a maximum of \$2,500 based on the total wall area that is insulated.

✓ Basement Insulation

Minimum Additional Insulation	% Area	R-10 to R-23	Greater than R-23
A minimum of 20% of the foundation's wall area (including basement and crawl space walls, when applicable) must be insulated to qualify. The grant is based on the percentage of wall area that is insulated and does not include walls between individual dwelling units.	20%	\$250	\$500
	40%	\$500	\$1,000
	60%	\$750	\$1,500
	80%	\$1,000	\$2,000
	100%	\$1,250	\$2,500

See "Important Note about Semi-Detached and Row Houses."

✓ Basement Header Insulation

Seal and insulate your entire basement header area, increasing its insulation value by a minimum of RSI 3.5 (R-20). **\$250**

✓ Crawl Space Insulation

Minimum Additional Insulation	R-10 to R-23	Greater than R-23
Insulate 100% of the crawl space's total exterior wall area, including the header area. See "Important Note about Semi-Detached and Row Houses."	\$1,000	\$2,000
Insulate 100% of the floor above the crawl space to increase its insulation value by a minimum of RSI 4.2 (R-24).	N/A	\$500

✓ Air Sealing

Perform air sealing to improve the air-tightness of your home to achieve the air change rate indicated in your home energy efficiency evaluation report.	Single-Family Home	
	\$380	
BONUS: If you reach 10% or 20% better than the target included in your report, you can obtain an additional grant.	10%	\$240
	20%	\$480

✓ MURB Multiplier

MURB Multiplier (for insulation and air sealing grants)

The appropriate multiplier must be applied to the grant level identified based on the nature of the work done.

	2-3	4-6	7-9	10-12	13-16	17+
Multiplier	1.0	1.5	2.0	2.5	3.0	4.0

✓ Doors, Windows, Skylights

Replace windows and skylights with models that are ENERGY STAR® qualified for your climate zone. (*per unit replaced)

Single-Family

Home

*\$80

MURB

*\$80

Grants for windows and skylights are based on the number of Rough Openings (RO) in which windows or skylights were replaced between the pre- and post retrofit evaluations. Each RO is counted as one window or skylight. An RO is defined as the structurally stable opening created by the builder for the installation of the window unit (i.e. framing and glazing) or skylight. (Note that a bay window, which may be made up of several windows, is regarded as one RO.)

Replace your exterior door(s) with an ENERGY STAR® qualified model(s) for your climate zone. (*per unit replaced)

*\$80

*\$80

To be eligible for a grant, proof of ENERGY STAR® qualification of windows, doors and skylights is required, such as the presence of an ENERGY STAR® label on all of the replacement windows, doors or skylights indicating they are ENERGY STAR® qualified for the house's climate zone. If the labels are removed by the installer, you should request them as proof, or request a copy of an invoice indicating:

- the brand/product name
- the Natural Resources Canada (NRCAN) model reference number or the manufacturer's model code
- the climate zone for which the windows, doors or skylights are qualified

✓ Water Conservation

Replace your toilet with a low-flush or dual-flush toilet rated at 6 litres per flush or less that meets the Los Angeles Supplementary Purchase Specification (SPS) and has a flush performance of 350 grams or more. (*per unit replaced)

*\$130

(maximum of 4 units per home)

*\$130

(maximum of 2 units per dwelling unit)

A product list is available on the Veritec Consulting Inc. Web site www.veritec.ca. Click "Reports" and select "ecoENERGY Eligible."

Important Note About Semi-Detached And Row Houses

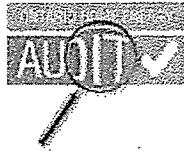
In the case of a semi-detached or row house that is an end unit, the grant amount for the insulation of exterior walls, basement or crawl space walls is 75% of the amounts shown. In the case of a row house that is a middle unit, the grant amount is 50% of the amounts shown.

Important Notes

1. When replacing ANY of the equipment listed in the grant chart, the new equipment must have an efficiency rating higher than that of the original equipment. The second system must be of the same type and efficiency. 2. New installations are not eligible in cases where improvements listed state "Replace". The Ontario Ministry of Energy and Infrastructure (MEI) and Natural Resources Canada (NRCAN) reserve the right to revise the information contained in this document, including the grant amounts and the eligibility requirements, without notice. The payment of grants is subject to the availability of funds. Please refer to www.ontario.ca/HomeEnergy for the most up-to-date information. 3. NRCAN and MEI do not endorse the services of any contractor or any specific product and accepts no liability in the selection of materials, products, contractors or performance or workmanship. 4. All upgrades or renovations must meet local codes and by-laws. Before undertaking upgrades or renovations, find out about the appropriate products and installation techniques to ensure that your home's building envelope and indoor air quality will not be compromised. 5. Renovations that are part of an addition made to a property following the pre-retrofit evaluation are not eligible for a retrofit grant and may reduce the grant amount for the improvement done on the existing portion of the house. Consult your energy advisor. 6. For more information on ENERGY STAR® qualified products, visit energystar.ca. The ENERGY STAR® name and the ENERGY STAR® symbol are registered trademarks of the United States Environmental Protection Agency. 7. Important information about Air-Source Heat Pumps and Central Air Conditioners a. In the case of air-source heat pumps and central air conditioners, a manufacturer's new ENERGY STAR® qualified matched condenser coil (outdoor unit comprising a condenser coil, compressor and cooling fan) and indoor evaporator coil (typically located with the furnace) must have a SEER of 14.5 or higher. Under no circumstances will the replacement of only one of these coils benefit the homeowner to a grant, just as components that are not certified by the manufacturer as being matched (i.e. tested together) will not be accepted. Currently, some manufacturers match their low SEER air conditioner/air-source heat pump coil packages with one of their business DC motor-equipped furnaces (i.e. blowers) as a method to reduce the power consumption requirement for ENERGY STAR® compliance and labelling. However, this arrangement is not accepted under the ecoENERGY Retrofit - Homes program and the Ontario Home Energy Savings Program because NRCAN already provides separate grants for furnaces that have an energy-efficient brushless DC motor. b. To be ENERGY STAR® qualified in Canada, in addition to the minimum requirement of SEER 14.5, air-source heat pumps must also have a minimum Heating Seasonal Performance Factor (HSPF) of 7.1 for Region V, which is more reflective of the Canadian climate. If the heat pump is only rated for Region IV, which is used in the United States, it must have a minimum HSPF of 8.2. c. Mini-split (ductless) air-source heat pumps must have at least one head per floor, excluding the basement, to qualify for a grant. d. In the case of mini-split (ductless) air conditioners that do not have at least one head per floor, excluding the basement, each head will be considered a room air conditioner and the grant amount will be reflected as such. e. When having your new central air conditioner or air-source heat pump installed, ask the contractor to indicate on your invoice the manufacturer's name (not the model name) of the condenser coil and the model numbers of both the new condenser and evaporator coils. Preferably, the Air-Conditioning and Refrigeration Institute (ARI) reference number should also be referenced on the invoice. The energy advisor will request to see this information when performing the post-retrofit evaluation of your home. 8. Insulation value in RSI equals the R insulation value divided by 5.678. 9. Please be aware of insulation materials that may be sold illegally, such as RetroFoam. RetroFoam is a urea formaldehyde-based thermal insulation (UFFI). The material is currently being investigated by Health Canada. MEI does not endorse any specific product and it is the homeowner's responsibility to ensure quality selection of materials, products, contractors or performance or workmanship.



You're 3 steps away from lowering your energy bills and getting up to \$10,000 in government rebates.



Find an energy advisor in your area, book an appointment and save half on your home audit, up to \$150

Step 1



Complete as many, or all of the recommended energy-saving upgrades

Step 2



Book a post-energy audit and get up to \$10,000 in government rebates.

Step 3

Step 1: Complete a home energy audit with an energy advisor in your area and save half on your home audit, up to \$150.

Finding a home energy advisor is easy. Just enter your postal code at www.ontario.ca/homeenergy for a list of licensed home evaluation organizations in your area. Get quotes from available organizations and schedule your Home Energy Audit with an energy advisor that's right for you. In most cases you can schedule an appointment within a week or two. The Government of Ontario will pay half of your pre-retrofit audit, up to \$150.

During your Home Energy Audit, an energy advisor will find your home's energy leaks and show what you can do to plug them. Your energy advisor will provide you with your personalized Energy Efficiency Evaluation Report and a plan that can reduce your energy bills. Your report includes your home's EnerGuide rating. This shows how energy efficient your home is and how efficient it could be with energy-saving improvements.

Step 2: Complete as many, or all of the recommended energy-saving upgrades.

Need a new furnace or water heater? Caulking around your windows and doors? Make some or all the upgrades suggested in your Energy Efficiency Report to improve your home's energy efficiency. Your report will show you the most important changes to maximize your energy savings.

Step 3: Get up to \$10,000 in Ontario and federal rebates

After your first audit, you have 18 months to complete some or all of the improvements suggested by your energy advisor to qualify for government rebates. After completing the work, book your post-retrofit audit. Your energy advisor will perform your audit and provide you with your home's new EnerGuide rating that shows how much you have improved your home's energy efficiency. A good EnerGuide rating can also increase the value of your home.

After your post-retrofit audit, the Governments of Ontario and Canada will each rebate up to \$5,000 for your energy efficient upgrades. The more energy-saving upgrades you make, the more money you'll get back, up to a total of \$10,000.

To get started book an appointment with a NRCan certified energy advisor, visit www.ontario.ca/homeenergy or call 1-888-668-4636.



Exhibit "B"

This is Exhibit *B* to the
Affidavit of *Barry Beale*
sworn before me this *5th*
day of *November*, 2010


A Commissioner, etc.

KAREN ANNA BARBARA ENSSLEN, a
Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires August 24, 2013.



- Delicious
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Ontario Gets Top Marks For Conservation

August 19, 2010 11:40 AM

McGuinty Government Earns an A+ on National Energy Efficiency Report Card

Ontario has jumped to the top of the class for its energy conservation efforts and earned an "A+" on the latest report card from the Canadian Energy Efficiency Alliance.

The top mark caps several years of improvement for Ontario. The province raised its grade up from a "C-" in 2004 with its strong commitment to energy efficiency and conservation as cornerstones of its energy plan.

In addition to the Green Energy Act, the report lauds Ontario's energy conservation programs, improved energy efficiency in building codes and product standards as well as other initiatives supporting energy efficiency.

The 2009 *National Energy Efficiency Report Card* was released today by CEEA, a national non-profit energy efficiency advocate. This year's biannual report covers the period from January 2008 to December 2009.

QUICK FACTS

- Ontario homeowners have completed over 380,000 home energy audits through the Ontario Home Energy Savings Program.
- 1,700 MW of conservation have been achieved since 2003.

- 1,400 MW of renewable energy has come online since 2003.
- The province has announced contracts for 694 small and large clean energy projects with a total capacity of more than 2,500 MW.

LEARN MORE

- View the 2009 Report Card results.
- Look into ways to conserve electricity, save money and help cut greenhouse gas emissions on the Ministry of Energy website.

CONTACTS

- Anne Smith
Communications Branch
416-327-7226
Anne.L.Smith@ontario.ca

Ministry of Energy and Infrastructure
ontario.ca/MEI

"In the past seven years, Ontario has steadily improved and is now demonstrating top marks in energy efficiency. I want to thank all Ontarians for doing their part. We should be proud of this achievement. Clear targets and strong policies and programs are an important part of the Open Ontario plan. This plan will ensure that Ontario continues to lead the way on conservation, clean energy generation and reducing harmful emissions."

– Brad Duguid
Minister of Energy

Site Help

Notices

- © Queen's Printer for Ontario, 2009 - 2010
 - IMPORTANT NOTICES

LAST MODIFIED: AUGUST 26, 2010

Exhibit "C"

This is Exhibit *C* to the
Affidavit of *Barry Beale*
sworn before me this *5th*
day of *November, 2010*


A Commissioner, etc.

KAREN ANNA BARBARA ENSSLEN, a
Commissioner, etc., Province of Ontario.
while a Student-at-Law.
Expires August 24, 2013.

Ontario Solar Thermal Heating Incentive (OSTHI) A Program of the Ontario Government

Website: <http://ecoaction.gc.ca/ecoenergy-ecoenergie/heat-chauffage/on-osthi-ioscst-eng.cfm>

Date Modified: February 25, 2010

What is the Ontario Solar Thermal Heating Incentive (OSTHI)?

OSTHI is an Ontario Government program that provides an incentive by way of a rebate to Ontario organizations in the commercial, industrial or institutional (ICI) sectors which install a qualifying **solar water** or **solar air** heating system.

Who funds the OSTHI?

OSTHI is funded by the Government of Ontario, Ministry of Energy, and is delivered in cooperation with Natural Resources Canada's (NRCan) federal *ecoENERGY for Renewable Heat* program. This collaboration provides a one-stop service to Ontario applicants who plan to install a qualifying solar water or solar air heating system at an eligible property.

When did the OSTHI start and when does it end?

OSTHI complements NRCan's ecoENERGY for Renewable Heat incentive and runs from June 20, 2007 to March 31, 2011.

How much is the OSTHI incentive?

- The OSTHI incentive complements the ecoENERGY for Renewable Heat incentive.

The incentive is calculated as follows:

Performance Factor x Incentive Rate x collector area = anticipated incentive amount

- Performance Factor is the predetermined factor for the collector installed. This factor can be found on the [List of Accepted Collectors](#). The performance factor attributed to the collector that you have selected will be valid as of the date of reception of your CDI-2008 application.
 - Incentive Rate is the incentive per m² for each collector type. Find the collector rate on the [Incentive Rate table](#).
 - Collector Area is the total installed area in square meters. This value can be calculated from the individual areas found on the [List of Accepted Collectors](#).
- The maximum incentive is \$80,000 per solar installation. Please note that Ontario is considering changing their cap to match the federal one.

- The corporate maximum incentive for multiple installations is \$2 million.

Is there any additional incentive for qualifying projects in remote communities?

- Yes. The OSTHI rebate may represent up to 40 per cent of eligible project costs to a total of \$80,000 in communities defined as remote in the program terms and conditions. This additional incentive matches the incentive available from NRCan.

Who qualifies for the OSTHI incentive?

- Businesses, industries and institutions located in Ontario, which qualify for a financial incentive for the installation of a solar water or solar air heating system under the federal *ecoENERGY for Renewable Heat* program are eligible for the OSTHI program.
- To qualify for the OSTHI program, an applicant must first be approved for a Contribution Agreement under the *ecoENERGY for Renewable Heat* program. When approved by Ontario, the applicant would then enter into a Contribution Agreement with Ontario.
- OSTHI funding is conditional upon the applicant's project being approved by *ecoENERGY for Renewable Heat* to receive an incentive under the federal program, and the applicant being in compliance with the Contribution Agreement.

How do I apply to the OSTHI program?

- An applicant must submit to NRCan:
 - A signed *ecoENERGY for Renewable Heat* Application Form:

[PDF \(110 KB\)](#)

[PDF \(105 KB\)](#)

Solar Water Application Form

Solar Air Application Form
 - A signed [OSTHI Consent and Release Form](#).
- Both federal and provincial forms must be submitted together to *ecoENERGY for Renewable Heat*.

What is the acceptance process?

- During its application review process, NRCan will inform OSTHI program administrators of the applicant's project details. In determining whether or not to fund the project, NRCan may accept or reject applicant information, or seek

additional details from the applicant (see *ecoENERGY for Renewable Heat's Terms and Conditions*).

- When a project has been approved for funding, NRCan will inform OSTHI program administrators of its funding decision, and Ontario will issue its own Contribution Agreement for the OSTHI incentive. NRCan will also issue a Contribution Agreement to the applicant.

When can I proceed with project installation?

- Both NRCan and Ontario will forward an unsigned Contribution Agreement to the applicant. The applicant must sign each Contribution Agreement and return them, respectively, to NRCan and the Ministry for signature.
- The Ontario Contribution Agreement is conditional upon the execution of the NRCan Contribution Agreement, and proof of insurance for the project as required by the Ontario Contribution Agreement.
- An applicant has six months from the date of the signed NRCan Contribution Agreement to complete installation of the project.

Are there limitations on where the equipment is installed?

Yes, equipment acquired through the OSTHI program must be installed in the Ontario premises of the qualifying Ontario entity.

When do I receive my OSTHI incentive?

Once the project is commissioned and the amount payable under the *ecoENERGY for Renewable Heat* is approved by NRCan, NRCan will inform OSTHI program administrators that it is initiating payment of the rebate to the applicant under the terms of the NRCan Contribution Agreement. The OSTHI program administrators will initiate a matching rebate payment under the terms of the Ontario Contribution Agreement.

Will information from my application be kept private?

- The applicant's signed OSTHI Consent and Release Form authorizes NRCan and Ontario to share information with each other. Information will be managed in accordance with the Freedom of Information and Protection of Privacy Act in Ontario and the federal Access to Information Act and Privacy Act.
- As public funds are used to support the *ecoENERGY for Renewable Heat* and OSTHI programs, projects that have Contribution Agreements signed by all parties may be posted on NRCan's and/or Ontario Ministry web sites. Published information may include the name of the recipient, type of system installed, location of installation, projected system output, government contribution amounts and expected or actual date of commissioning of the system.

Whom can I contact with my questions?**For OSTHI:**

Ministry of Energy
900 Bay Street, 4th Floor
Hearst Block
Toronto, Ontario, M7A 2E1
Toll-Free: 1-888-668-4636
E-Mail: write2us@energy.gov.on.ca
Web Site: <http://www.mei.gov.on.ca/en/energy/conservation/smartmeters/?page=osthi>

For Program Eligibility and Qualifying Products:

ecoENERGY for Renewable Heat
Renewable and Electrical Energy Division
Natural Resources Canada
615 Booth Street, Room 150
Ottawa, Ontario, K1A 0E9
Fax: 1-613-943-6517
E-Mail: ecoenergyrhp@nrcan.gc.ca
Web Site: <http://ecoaction.gc.ca/ecoenergy-ecoenergie/heat-chauffage/index-eng.cfm>

Appendix

the Appendix
This is ~~Exhibit~~ to the
Affidavit of *Barry Beale*
sworn before me this *5th*
day of *November, 2010*


A Commissioner, etc

KAREN ANNA BARBARA ENSSLEN, a
Commissioner, etc., Province of Ontario,
while a Student-at-Law.
Expires August 24, 2013.

Table 1.
Estimated vs. Actual Costs to Government,
HESP and OSTHI Programs,
Fiscal Year 2009/2010

	Estimate at Dec 31/09	Actual at March 31/10
Revenue collected by Govt.	\$53,695,310 (to be collected)	\$53,695,310 (actually collected)
Costs paid out by Govt.	\$53,695,310 (to be paid out)	\$51,253,901 (actually paid out)
DIFFERENCE	\$0	\$2,441,409*

*Maintained in a special purpose account as defined in the *Financial Administration Act*--may only be employed for the "special purposes" listed in s.26.2 of the OEBA.

Table 2.
Estimated Costs to Government
HESP and OSTHI Programs,
Fiscal Year 2009/10
Determined as of Dec.31/09
(ALL FUELS)

	Actual payout at December 31, 2009	Estimated payout to March 31, 2010	TOTAL
HESP	\$103,784,914	\$77,550,795	\$181,335,709
OSTHI		\$3,174,404	\$3,174,404
TOTAL	\$103,784,914	\$80,725,199	\$184,510,113

Table 3. Estimated Costs to Government HESP and OSTHI Programs, Fiscal Year 2009/10 Determined as of Dec.31/09 (BY FUEL CATEGORY)			
	Estimated Total Cost	Allocation Electricity	Allocation Other Fuels
HESP	\$181,355,709	\$53,266,344	\$128,069,364
OSTHI	\$3,174,404	\$428,965	\$2,754,438
TOTAL	\$184,510,113	\$53,695,310	\$130,814,802

Table 4. Actual Costs to Government, HESP and OSTHI Programs, Fiscal Year 2009/10 Determined as of Mar. 31/10 (BY FUEL CATEGORY)			
	Total Cost	Allocation Electricity	Allocation Other Fuels
HESP	\$179,038,630	\$51,153,859	\$127,884,770
OSTHI	\$2,288,301	\$100,042	\$2,188,259
TOTAL	\$181,326,931	\$51,253,901	\$130,073,029

HESP- Fuel Apportionment Examples

Sample Project 1

- Displaced Energy:
 - Natural Gas (heating);
 - Electricity (cooling)
- Ontario Grant Contribution: \$440
- Cost Recovery Split:
 - **Other: \$216;**
 - **Electricity: \$224**

Retrofit	Air Sealing	Central AC	ESTAR Doors
Ontario Grant Contribution	\$150	\$200	\$90
Split (%)	Other - 90; Elec - 10	Elec - 100	Other-90; Elec - 10
Split (\$)	Other-\$135; Elec-\$15	Elec - \$200	Other-\$81; Elec - \$9

Sample Project 2

- Displaced Energy:
 - Oil (heating);
 - Electricity (cooling)
- Ontario Grant Contribution: \$740
- Cost Recovery Split:
 - **Other: \$486;**
 - **Electricity: \$254**

Retrofit	Air Sealing	Central AC	ESTAR Doors	Attic Insulation
Ontario Grant Contribution	\$150	\$200	\$90	\$300
Split (%)	Other - 90; Elec - 10	Elec - 100	Other - 90; Elec - 10	Other - 90; Elec - 10
Split (\$)	Other - \$135; Elec - \$15	Elec - \$200	Other - \$81; Elec - \$9	Other - \$270; Elec - \$30



ONTARIO ENERGY BOARD

FILE NO.: EB-2010-0184

VOLUME: Technical Conference

DATE: November 16, 2010

EB-2010-0184

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 a motion by the Consumers
Council of Canada in relation to section 26.1 of
the *Ontario Energy Board Act*, 1998 and Ontario
Regulation 66/10.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Tuesday, November 16th, 2010,
commencing at 9:45 a.m.

TECHNICAL CONFERENCE

A P P E A R A N C E S

MICHAEL MILLAR	Board Counsel
GONA JAFF	Board Staff
ROBERT WARREN	Consumers' Council of Canada
ERIN PLEET	
JULIE GIRVAN	
JANET MINOR	Ministry of the Attorney General
ROBERT DONATO	of Ontario
JAMES REHOB	
ARIF VIRANI	
KAREN ENSSLEN	
PETER THOMPSON	Canadian Manufacturers & Exporters (CME)
GEORGE VEGH	Union Gas Limited
MARK KITCHEN	
ELISABETH DEMARCO	Association of Power Producers of
JOHN WOLNIK	Ontario (APPrO)
IAN MONDROW	Industrial Gas Users Association (IGUA)
FRED CASS	Enbridge Gas Distribution
NORM RYCKMAN	

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1 Tuesday, November 16, 2010

2 --- On commencing at 9:45 a.m.

3 MR. MILLAR: Okay, good morning, everyone. I think we
4 will get started.

5 On April 26th, 2010 the Ontario Energy Board received
6 a notice of motion from the Consumers Council of Canada
7 regarding the assessments issued by the Board pursuant to
8 section 26.1 of the OEB Act. The Board has assigned file
9 number EB-2010-0184 to this matter.

10 In Procedural Order No. 6, the Board stipulated that
11 the Attorney General and intervenors could file affidavit
12 evidence. The Board set aside today for parties to
13 question witnesses on these affidavits.

14 My name is Michael Millar. I am counsel for Board
15 Staff. As indicated in the procedural order, there are no
16 Board Members present today, and I of course have no power
17 or indeed any inclination to make any rulings.

18 I will be acting essentially as a master of ceremonies
19 and nothing more.

20 I think we will start with some appearances and get
21 right into the cross-examinations, unless there are any
22 preliminary matters. I would remind parties, especially
23 those who aren't frequently before the Board, that you need
24 to press the green button beside your mic before you speak
25 or else the court reporter won't be able to hear you.

26 I also ask that you turn off the mic if you are not
27 addressing the room; otherwise, your voice will be picked
28 up.

1 Why don't we start with appearances perhaps with the
2 Attorney General's office?

3 **APPEARANCES:**

4 MS. MINOR: Janet Minor.

5 MR. VIRANI: Arif Virani. To my left is also Robert
6 Donato, on my far left, and James Rehob on my right.

7 MR. WARREN: My name is Robert Warren for the
8 Consumers Council of Canada and with me is Aubrey LeBlanc
9 and Catherine Powell.

10 MR. THOMPSON: Peter Thompson for Canadian
11 Manufacturers & Exporters.

12 MS. GIRVAN: Julie Girvan, Consumers Council of
13 Canada.

14 MR. VEGH: George Vegh, counsel for Union Gas Limited.
15 I am joined by Mark Kitchen, director regulatory affairs at
16 Union Gas.

17 MS. DeMARCO: Elisabeth DeMarco, the Association of
18 Power Producers of Ontario, and I am joined by the affiant,
19 Mr. John Wolnik, and we will have a preliminary matter that
20 we would like to raise.

21 MR. MONDROW: Ian Mondrow, counsel for the Industrial
22 Gas Users Association, or IGUA.

23 MR. CASS: Fred Cass, counsel for Enbridge Gas
24 Distribution, with Norm Ryckman.

25 MR. MILLAR: Thank you. I understand Ms. DeMarco has
26 a preliminary matter, so I guess we will start with that,
27 but before we hear from her, does anyone else have any
28 preliminary matters? Okay, Lisa.

1 **PRELIMINARY MATTERS:**

2 MS. DeMARCO: Just Mr. Wolnik is with me to answer any
3 questions in relation to his affidavit, and I have done a
4 quick canvass of counsel and I understand no one does have
5 any questions for him at this time. So with the good
6 graces of everyone in the room, he would like to take his
7 leave.

8 MR. MILLAR: Ms. Minor, I would understand that you
9 would be the only one who would be likely to cross-examine,
10 so I take it you don't intend to do so?

11 MS. MINOR: No, we don't.

12 MR. MILLAR: Okay. Any other preliminary matters?

13 Okay, I understand that Mr. Vegh wishes to go first
14 with the cross-examination. We don't do this all that
15 often, but I propose we swear in the witness, and then we
16 get directly to cross-examination.

17 **BARRY BEALE, SWORN**

18 MR. MILLAR: Okay, Mr. Vegh, over to you.

19 **CROSS-EXAMINATION BY MR. VEGH:**

20 MR. VEGH: Thank you. Mr. Beale, first I was going to
21 apologize to you and everyone in the room. I am having a
22 bit of a hearing disorder right now.

23 MR. BEALE: Me too.

24 MR. VEGH: That's very funny. So I can't regulate my
25 voice very well, and I also have difficulty hearing. So I
26 would appreciate if you could speak directly into the
27 microphone for my benefit.

28 Related to that, I would like to thank Mr. Warren for

1 allowing me to go first so I can have this hearing issue
2 looked at by a doctor. So thank you, Mr. Warren, for
3 allowing me to queue jump. Poor me.

4 So, Mr. Beale, I am going to have questions for you on
5 your affidavit. I have also prepared some materials that I
6 have identified for your counsel earlier and handed out a
7 hard copy this morning. The materials are -- the book is
8 called "Materials Used in Cross-Examination by Union Gas",
9 and, Mr. Millar, I wonder if we could mark this for
10 identification purposes.

11 MR. MILLAR: Yes, we will. We will call this -- I
12 guess KT is the standard normally for a technical
13 conference, even though this isn't technically a technical
14 conference, but we will call it KT1.1.

15 **EXHIBIT NO. KT1.1: BOOKLET ENTITLED "MATERIALS USED**
16 **IN CROSS-EXAMINATION BY UNION GAS".**

17 MR. VEGH: Sorry I don't have copies for everyone in
18 the room. I didn't bring enough copies. I handed them out
19 to the witness and to counsel for the Attorney General and
20 the applicant. I will be filing electronic copies, as
21 well.

22 So, Mr. Beale, I would like to start with your
23 affidavit. Part 1 of your evidence, starting just above
24 paragraph 6, is entitled, "Complete, Complex and Detailed
25 code of regulation", and I would like to ask you some
26 questions on how the revenues from the conservation levy
27 fit within this.

28 At paragraphs 7 and 8 of your affidavit, you refer to

1 the creation of the Ontario Power Authority with the
2 mandate to create an integrated power system plan.

3 Mr. Beale, the OPA recovers its operating costs
4 through fees approved by the Energy Board. Are you aware
5 of that?

6 MR. BEALE: Yes, sir.

7 MR. VEGH: And the conservation levy cannot be used to
8 pay for the OPA operating costs; is that right?

9 MR. BEALE: That's my understanding.

10 MR. VEGH: Going to paragraph 10, paragraph 10 sets
11 out components of what you call the regulatory scheme. I
12 would like to go to the subparagraphs. First, in
13 subparagraph 1, you refer to the Green Energy Act, and the
14 only regulatory activities you refer to in that
15 subparagraph is the power to designate goods, services and
16 technologies. So I would like to take you to the Green
17 Energy Act and understand that power of designation. That
18 is at KT1.1 --

19 MS. MINOR: Could I just interrupt for a moment? Are
20 you going to be asking him for legal conclusions, Mr. Vegh?

21 MR. VEGH: I think the conclusions that -- the
22 questions are going to be really around this designation
23 power that is described in 10(1). If you think I am
24 crossing the line looking for a legal opinion, perhaps you
25 could let me know. I think this should be pretty
26 straightforward.

27 MS. MINOR: Let's start, then.

28 MR. VEGH: So, first of all, Mr. Beale, the

1 designation powers you refer to in your affidavit, those
2 are the designation powers in Part II of the Green Energy
3 Act?

4 MR. BEALE: If I am following your handout, yes, Part
5 II, yes.

6 MR. VEGH: And, specifically, I am looking at sections
7 4 and 5, and are these the designation powers you are
8 referring to?

9 MR. BEALE: Those are two examples of powers in the
10 Green Energy Act.

11 MR. VEGH: I'm sorry?

12 MR. BEALE: Those are two examples of powers in the
13 Green Energy Act, yes.

14 MR. VEGH: Specifically the power to designate that
15 you are referring to in section 10(1).

16 MR. BEALE: Yes. Well, specifically there are two in
17 that category, one of which deals only with conservation
18 and another one deals only with renewable energy. Only
19 conservation is section 4, and 5 deals with renewable
20 energy sources.

21 MR. VEGH: Okay. So I am going to ask you questions
22 about both of those sections, and, after that, if there are
23 other sections that you are referring to in your affidavit
24 respecting designation, you could let me know.

25 MR. BEALE: Hmm-hmm.

26 MR. VEGH: So first on section 4, which deals with, as
27 you say, conservation, as I read section 4(1) -- sorry.

28 As I read section 4, the effect of the designation is

1 that a person is allowed to use designated goods, services
2 and technologies despite any other legal restrictions. Is
3 that your understanding?

4 MR. BEALE: Restrictions imposed at law, which would
5 include municipal bylaws, bylaws of condominium
6 corporations and any encumbrance on real property.

7 MR. VEGH: Those are the -- sorry, go ahead.

8 MR. BEALE: Those are the three and only restrictions
9 at law that the section is intended to apply to.

10 MR. VEGH: I see. Now, the government doesn't incur
11 any costs in designating these goods, services and
12 technologies, does it?

13 MR. BEALE: I don't believe it would, no.

14 MR. VEGH: So the revenues from the conservation levy
15 do not contribute to that designation function?

16 MR. BEALE: No, it doesn't.

17 MR. VEGH: Now, the next designation power is in
18 paragraph -- or section 5, and as you indicated, that
19 section refers to the designation of renewable energy
20 projects.

21 MR. BEALE: Renewable energy sources, yes.

22 MR. VEGH: Yes. And subsection (2) addresses the
23 effect of designation, and am I right that your
24 understanding is that the general effect is to allow a
25 person to engage in those activities, despite a law to the
26 contrary?

27 MR. BEALE: That is my understanding. I am not
28 familiar with 5, 1, 1, 2. My scope of responsibility has

1 been only in 5, 1, 1.

2 MR. VEGH: I see.

3 MR. BEALE: So I can't comment about 5, 1, 2.

4 MR. VEGH: Again, the government does not incur any
5 costs in designating these projects?

6 MR. BEALE: Under 5, 1, 1? No.

7 MR. VEGH: And so the revenues from the conservation
8 levy do not contribute to that designation function,
9 either?

10 MR. BEALE: No.

11 MR. VEGH: Sorry?

12 MR. BEALE: No.

13 MR. VEGH: Now, the next subparagraph in your
14 evidence -- so that is paragraph 10, sub (2) -- refers to
15 the Ontario Energy Board Act and the OEB's licensing
16 authorities and licensing requirements.

17 The OEB is a self-funding organization; you are aware
18 of that?

19 MR. BEALE: I understand that to be the case, yes.

20 MR. VEGH: And the revenues from the levies cannot be
21 used to fund the OEB operations?

22 MR. BEALE: I would imagine not.

23 MR. VEGH: So there is no relation between the levies
24 or the revenues collected under the levies and OEB
25 regulation; is that right?

26 MR. BEALE: That is my understanding.

27 MR. VEGH: Okay. Now, paragraph -- paragraph 10, sub
28 (3) refers to supply and capacity procurement initiatives

1 and specifically that the minister can direct the OPA to
2 procure renewable resources and conservation.

3 Now, the costs of these procurements are recovered in
4 electricity charges; is that right?

5 MR. BEALE: Well, as a procurement recovery, it would
6 be a charge that would be paid through GAM, is my
7 understanding. Yes.

8 MR. VEGH: I'm sorry can you repeat that, again? I
9 apologize.

10 MR. BEALE: No, I am not -- I am not familiar
11 specifically with what you are asking, so if you could be a
12 little clearer for me, please.

13 MR. VEGH: Okay. Well, let's put it this way. The
14 revenues from the levies cannot be used to pay for the cost
15 of OPA procurements?

16 MR. BEALE: For these levies?

17 MR. VEGH: Yes.

18 MR. BEALE: The levies that we're talking about with
19 this legislation, yes.

20 MR. VEGH: Yes.

21 MR. BEALE: That's correct.

22 MR. VEGH: This paragraph 10, sub (3) goes on to refer
23 to the connection obligations of distributors and
24 transmitters.

25 Now, in meeting their connection obligations,
26 distributors and transmitters recover costs from their
27 customers; right?

28 MR. BEALE: I understand that to be the case, yes.

1 MR. VEGH: And the revenues from these levies cannot
2 be used to pay for the costs of connections?

3 MR. BEALE: No.

4 MR. VEGH: Now, the final paragraph in this section is
5 paragraph 12. It refers to a network of agencies that have
6 conservation responsibilities, and I would just like to go
7 through that list and ask you whether the levies can be
8 used to meet the conservation responsibilities of those
9 agencies.

10 We had already discussed the OEB and the OPA.

11 The next category is local distribution companies.
12 Your understanding, I take it, is that the levies cannot be
13 used to meet the conservation obligations of local
14 distribution companies?

15 MR. BEALE: That's true.

16 MR. VEGH: They cannot be used to meet the
17 conservation obligations of gas utilities?

18 MR. BEALE: That's true.

19 MR. VEGH: And they cannot be used to meet the
20 conservation obligations of the IESO?

21 MR. BEALE: That's true.

22 MR. VEGH: Now, part 2 of your evidence refers to a
23 couple of specific programs, HESP and OSTHI.

24 I take it that these are the only programs that are
25 being funded by the conservation levies?

26 MR. BEALE: That's true.

27 MR. VEGH: So let's look at these programs.

28 First, can you tell me when these programs started?

1 MR. BEALE: What has become the Ontario Home Energy
2 Savings Program got two separate authorities.

3 One authority was initially given in the budget of
4 2007. And that related to the audit portion of that --
5 what is now the HESP program. In June of that year, the
6 premier announced a -- that the province would match an
7 existing federal program, which is the Equal Energy Home
8 Program, match the retrofit assistance that that program
9 gave.

10 Subsequently, the audit and the retrofit components of
11 the program were put together, to comprise the Home Energy
12 Savings Program. The program went through a period of
13 negotiation with the federal government to establish a
14 Memorandum of Understanding, in terms of the requirements
15 of both parties and the administration of the program.

16 And as I believe, while applications were being
17 accepted, payments began to be made, I think, in the
18 January or February time period of 2008.

19 MR. VEGH: And the other program?

20 MR. BEALE: The Ontario Solar Thermal Heating
21 Initiative also wasn't called that at the time the premier
22 announced it.

23 Again, as I recall, it was in June of '07. The
24 premier identified these two programs, in addition to
25 several others, as part of his climate change initiative.

26 And we went through a similar process of negotiation
27 with the federal government, in terms of the matching
28 contribution of our program to theirs, and the extent to

1 which our administrative systems would be speaking to each
2 other and rely on each other for approvals.

3 MR. VEGH: And when did the conservation levies start
4 contributing to the costs of these programs?

5 MR. BEALE: The regulation that we're dealing with was
6 for the fiscal year '09-'10.

7 MR. VEGH: So when does that start in '09?

8 MR. BEALE: March -- April 1st, '09, through to March
9 31st, 2010.

10 MR. VEGH: Okay. So I would like to ask you questions
11 about these programs, starting on the -- these questions
12 would be starting on the -- at the time that the levies
13 started paying for these programs. I understand that there
14 were earlier iterations from what you just said, but the
15 programs as currently constituted and paid for, at least in
16 part, by these levies.

17 MR. BEALE: For the period 2009-2010, fiscal year.

18 MR. VEGH: Yes.

19 MR. BEALE: Just that period, yes.

20 MR. VEGH: Well, for the period that it started to the
21 period that it stops.

22 MR. BEALE: Well, the recovery in this regulation was
23 only for that period.

24 MR. VEGH: Fine. Thank you.

25 MR. BEALE: If I understand your question.

26 MR. VEGH: Specifically, I would like to understand
27 the respective roles of the federal and provincial
28 governments in this program, and to do that, I would like

1 you to turn to page 12 of the book of materials, KT1.1,
2 which starts off a series of couple of web pages from
3 NRCan.

4 And sorry, I would like to start at page 21, and I
5 will then go back to page 12. The one starting at page 21
6 is a series of frequently asked questions.

7 I don't know if you require some time to go through
8 that, to go through these documents. Are you familiar with
9 these documents --

10 MR. BEALE: Well, these are federal documents. I
11 mean, we do have a matching program, so many of the terms
12 and conditions should be familiar to me.

13 But I have not seen this document before.

14 MR. VEGH: Okay. So perhaps I will -- perhaps let me
15 ask the questions, and if you have some concerns about
16 whether you are familiar enough with the document to answer
17 it, you could let me know.

18 As I said, I am looking at the, in particular, the
19 respective roles of the federal and provincial government
20 in the operation of its program.

21 And the FAQ I am relying on, just because it has a
22 number of categories of issues, I would like to know who is
23 responsible for setting the requirements with respect to
24 those categories of federal or provincial government.

25 So just as we go down the list, perhaps this would be
26 more clear. First, the first category I see is eligible
27 homeowners and properties. Can you tell me who determines
28 the eligibility? Is it the federal or provincial

1 government? This is for the HESP program.

2 MR. BEALE: What page are you on, George?

3 MR. VEGH: I am on page 21 of the materials, or page 1
4 of 12 of the FAQ.

5 MR. BEALE: And which bullet are we speaking to?

6 MR. VEGH: So there is a bullet near the bottom
7 called, "Eligible homeowners and properties" and it has a
8 series of questions.

9 MR. BEALE: Okay.

10 MR. VEGH: And my question to you is: Who is
11 responsible, the federal or provincial government, for
12 determining which homeowners and properties are eligible?

13 MR. BEALE: We adopted the federal eligibility
14 criteria.

15 MR. VEGH: Okay. So the federal government sets the
16 criteria?

17 MR. BEALE: Right. There is a practical reason why
18 the criteria is set as it is. The program relies on an
19 energy audit and energy software, which is useful for only
20 certain kinds of buildings, certain size of buildings.

21 So the eligibility criteria is restricted to those
22 building types that the software can usefully measure
23 energy performance on, as well as a determination that it
24 should be the owner of the building that is eligible, not a
25 tenant or somebody else.

26 MR. VEGH: So to just answer the question, then, I
27 understand that there is probably a rationale for all of
28 this, but it is the federal government that determines

1 which homeowners are eligible?

2 MR. BEALE: It was their program, and their program,
3 again, began before we joined in. So to a large extent, we
4 were adopting the eligibility criteria that the federal
5 government had in their program.

6 MR. VEGH: And, similarly, the federal government, as
7 well as setting the eligibility criteria for the
8 homeowners, also sets the eligibility criteria for the
9 properties?

10 MR. BEALE: For the properties? The home? The home
11 itself?

12 MR. VEGH: I am looking at the category here,
13 "eligible homeowners and properties".

14 MR. BEALE: Yes. Single family home, three storeys or
15 less, with a footprint of less than 600 square metres, and
16 it does allow for MURBs, but also MURBs that are less than
17 three storeys or less.

18 MR. VEGH: Right. This criteria is set by the federal
19 government?

20 MR. BEALE: Yes.

21 MR. VEGH: And the next category is eligible measures.

22 MR. BEALE: Yes.

23 MR. VEGH: That is measures in technologies. Is that
24 set by the federal government or the provincial government?

25 MR. BEALE: It was set by the federal government.

26 MS. MINOR: I take it, Mr. Vegh, your understanding
27 that they were set, and then they were adopted by the
28 provincial government, that is his answer; correct?

1 MR. VEGH: I want to know who established them.

2 MS. MINOR: Establish, and then the province adopted.
3 Is that clear?

4 MR. VEGH: I understand from his answers.

5 MS. MINOR: Okay.

6 MR. VEGH: The next category is post retrofit
7 evaluations. Is the federal government responsible for
8 that component, as well, or the provincial government?

9 MR. BEALE: The federal government is responsible for
10 it, in the sense that the auditors that do the post
11 retrofit evaluation are licensed by Natural Resources
12 Canada to use their software.

13 Those auditors, having done the post retrofit
14 evaluation and confirmed what measures had been installed
15 in the facility, prepare and submit on behalf of the
16 homeowner an application to Natural Resources Canada which
17 is used as the basis of their payment and subsequently used
18 as the basis for our payment.

19 MR. VEGH: So that entire apparatus you described,
20 those standards and requirements are set by the federal
21 government?

22 MR. BEALE: Yes.

23 MR. VEGH: The next category of questions is around
24 cheque status. The first bullet it is, "How long does it
25 take to receive my cheque?"

26 I guess both the federal and provincial governments
27 send cheques?

28 MR. BEALE: Independently, yes.

1 MR. VEGH: Yes. The next document -- the next
2 category is program extensions and re-entry. Is that
3 determined by the federal or provincial government?

4 MR. BEALE: That has been done by the federal
5 government.

6 MR. VEGH: Thank you. And the final one I want to ask
7 you about is how to become qualified as an energy advisor.
8 Does the federal or provincial government address or
9 determine eligibility of an energy advisor?

10 MR. BEALE: At this time, the federal government
11 licences the energy auditors.

12 MR. VEGH: Now, for this program, some of the funding
13 of this program is provided by the conservation levy?

14 MR. BEALE: The charge that we're speaking about today
15 has charges related to those measures which could be
16 identified as having a cost to electricity as a measure,
17 only electricity.

18 MR. VEGH: So a portion of the cost of this -- of this
19 program is paid for by the levy?

20 MR. BEALE: A portion.

21 MR. VEGH: Yes. And the remainder of the cost of this
22 program, how are they funded? From general revenues?

23 MR. BEALE: From the fiscal plan, yes. From the
24 fiscal plan.

25 MR. VEGH: Is that general revenues?

26 MR. BEALE: Yes.

27 MR. VEGH: And I guess prior to the levy being used
28 for these purposes, all funds were paid for out of general

1 revenues for these programs?

2 MR. BEALE: That's correct.

3 MR. VEGH: Now, with the introduction -- I am trying
4 to understand. So what we had with the introduction of the
5 conservation levy is a contribution to the cost of these
6 programs. Has anything in these programs changed as a
7 result of the conservation levy, other than the funding?

8 MR. BEALE: The program is delivered in the same way
9 as it had been prior to, and since.

10 MR. VEGH: So nothing has changed, then?

11 MR. BEALE: No.

12 MR. VEGH: At Exhibit A of your affidavit, you attach
13 a brochure I guess from the provincial government
14 explaining the -- or I guess advertising the program, and
15 there is a list starting at -- after the cover page of
16 eligible improvements.

17 I would like you to keep that open and go back to the
18 grant table which is available on the federal website and
19 that I have included at page 12 of the materials that I
20 provided in KT1.1.

21 The materials at KT1.1, page 12, again, these are
22 NRCan documents that set out the grant table, which I take
23 it has the description of the programs covered by the audit
24 program -- or the specific activities covered by the audit
25 programs, the grants amounts and the contributions.

26 Then your document at Exhibit A of your evidence has
27 the same kind of format, a little -- dressed up a little
28 bit with the provincial brand, I guess. But as I look at

1 the columns in the federal grant table and your program --
2 so, for example, under the heading "Heating Systems", you
3 seem to have -- you have a column "Heating System", a
4 column "Grant Amounts", a column "MRUB", and as I -- I want
5 to take you through every cell of these program
6 descriptions, but am I correct in that the grant table that
7 NRCan uses is replicated virtually word for word in the
8 document at Exhibit A of your affidavit that sets out the
9 eligible programs and retrofits?

10 MR. BEALE: I haven't parsed it that carefully, but it
11 would be reasonable that they would be consistent, at
12 least.

13 MR. VEGH: Well, I don't know if you want to parse it.
14 As I look at it, it is basically a cut and paste. Since
15 eligible -- or what the province provides is additional
16 funding to these existing federal programs, would you agree
17 that basically the description of the federal programs at
18 page 12 is really identical to the description of the
19 programs at Exhibit A of your affidavit?

20 MR. BEALE: They should be consistent, but as I say, I
21 have not -- if you would like me to take the time and do
22 that comparison, I will.

23 MR. VEGH: Well, then perhaps I will take the
24 undertaking, that if there are differences between --

25 MR. BEALE: That's fair.

26 MR. VEGH: -- what is in your Exhibit A and what is in
27 the grant table, can you undertake to let me know if there
28 are any differences?

1 MR. BEALE: Yes.

2 MR. VEGH: Thank you.

3 MR. BEALE: The only obvious difference is the grant
4 amounts that are shown in the provincial table include the
5 federal amounts.

6 The determination had been that putting this kind of a
7 table together with two different grant tables -- one for
8 the federal government, one for the provincial government
9 and then a total for what the homeowner could obtain --
10 wasn't very helpful as a communications tool.

11 So clearly, on the federal document that you have
12 shown, that is the federal share, and on the provincial
13 document it is the provincial and federal share.

14 MR. VEGH: Right. And if there are any other changes,
15 you will let me know?

16 MR. MILLAR: Mr. Vegh, we will mark that, if you
17 prefer, as Undertaking JT1.1.

18 **UNDERTAKING NO. JT1.1: TO ADVISE IF THERE ANY OTHER**
19 **CHANGES BETWEEN CONTENTS OF AFFIDAVIT EXHIBIT A TO THE**
20 **GRANT TABLE AMOUNTS.**

21 MR. VEGH: So I would like to ask some questions about
22 this second program now, which is the solar program.

23 The description in the materials that I provided
24 starts at page 33. Again, these are web pages from NRCan.

25 And starting at 37, which is the second web page, and
26 maybe if you'd just explain the relationship, if you go to
27 page 33, you see the quick links. And so when you click on
28 "Terms and Conditions" under the quick links in the bottom

1 right hand corner, you see the terms and conditions pop up.
2 And that is the second page I am referring to, starting at
3 page 37, or the second document.

4 MR. BEALE: Yes.

5 MR. VEGH: And it has -- this document sets out the
6 detailed terms and conditions of this program. I won't
7 take you through every document, or every component of the
8 terms and conditions, but I take it that you would agree
9 that the terms and conditions are determined by the federal
10 government?

11 MR. BEALE: The terms and conditions were initially
12 developed by the federal government, and we adopted -- I
13 can't think of any exceptions, but we adopted those terms
14 and conditions as part of the eligibility requirements for
15 our program.

16 MR. VEGH: So the terms and conditions were determined
17 by the federal government?

18 MR. BEALE: Yes.

19 MR. VEGH: And Ontario's role here is to contribute to
20 the funding of the program?

21 MR. BEALE: That's correct.

22 MR. VEGH: And again, some of those funds are provided
23 by the levy?

24 MR. BEALE: By this levy, yes.

25 MR. VEGH: And the rest of the funds are provided by
26 general revenue?

27 MR. BEALE: Yes, for any measure that is not based on
28 electricity.

1 MR. VEGH: Right. Well, all the remainder of the
2 funds other than what is provided by the levy are paid for
3 from general revenues; right?

4 MR. BEALE: Yes.

5 MR. VEGH: And again, nothing in this program has
6 changed upon the introduction of the conservation levies,
7 other than the funding of the programs?

8 I am asking whether anything in these programs -- this
9 program, the Solar Thermal Heating Incentive Program -- has
10 changed as a result of the imposition of the levy, other
11 than the funding of the programs.

12 MR. BEALE: No.

13 MR. VEGH: Now, part 3 of your exhibit states that
14 regulated entities cause the need for or derive benefit
15 from the regulation, or at least that is the heading in
16 part 3, and it starts at page 6.

17 Do you have that?

18 MR. BEALE: Yes, I do.

19 MR. VEGH: Now, first you have a discussion at
20 paragraphs 24 and 25, and I think those paragraphs raise a
21 couple of important points. So I would like to focus on
22 those two in particular to start.

23 And I want to summarize it for you, and you can tell
24 me if you think I have it right.

25 I think the gist of your point in these paragraphs is
26 that conservation can be used to meet reliability
27 requirements in a way that is an alternative to meeting
28 those requirements through supply and distribution; is that

1 right?

2 MR. BEALE: I would say it is a complementary
3 strategy, not -- it is not intended to substitute for other
4 strategies.

5 MR. VEGH: Well, when you say that -- oh, I see. It
6 is part of the strategy, but the conservation resources
7 themselves are alternatives to generation resources?

8 MR. BEALE: Generation resources and demand response
9 resources, as well, yes.

10 MR. VEGH: Alternatives to generation resources and?

11 MR. BEALE: Demand response conservation programs, as
12 well as other conservation programs, are alternatives to
13 building new generation.

14 MR. VEGH: Yes. So you're saying that as part of a
15 balanced portfolio, conservation resources can be used as
16 an alternative to supply resources, as a way of meeting
17 reliability requirements?

18 MR. BEALE: That's fair.

19 MR. VEGH: And so in other words, effectively, if you
20 can avoid consumption, then you could meet reliability
21 requirements in a way that uses or that avoids using supply
22 and distribution alternatives?

23 MR. BEALE: It can have that outcome, yes.

24 MR. VEGH: Now, you understand that the electricity
25 system is built to meet peak demand?

26 MR. BEALE: Yes.

27 MR. VEGH: And so you can only avoid supply and
28 distribution resources when your conservation resources

1 contribute to reducing peak demand?

2 MR. BEALE: There are certain programs that are
3 specifically directed at reducing peak demand.

4 There are certain technologies which could be part of
5 an energy efficiency program that happen to have a load
6 profile that matches peak demand, which would also reduce
7 peak demand. Air-conditioning is an obvious example of
8 that kind of a technology.

9 MR. VEGH: So are you agreeing with me, then, that in
10 order to avoid supply or distribution resources to meet
11 peak demand, your technology or -- your conservation
12 technology, your program, must reduce peak demand?

13 MR. BEALE: It must reduce peak demand, but I think it
14 is also widely known -- widely held that where conservation
15 is reducing load, that over time, that also reduces the
16 need for generation at peak demand.

17 MR. VEGH: So it reduces the requirement for
18 generation to be used to meet peak demand; is that right?

19 MR. BEALE: I think so. I think that is what I'm
20 saying, yes.

21 MR. VEGH: So I would like to examine that proposition
22 a little more closely, then, in the context of these
23 programs and also in the context of the treatment of
24 conservation in the Ontario Power Authority's IPSP.

25 Are you familiar with that document, the IPSP?

26 MR. BEALE: Well, up until the weekend when I received
27 it, the last time I might have read it was three or four
28 years ago. So I have read it, but I am not going to claim

1 to be intimately familiar with it.

2 MR. VEGH: So let's see how far we can go, then.

3 For some context, my understanding of the IPSP
4 structure is that the government sets targets for
5 resources, both conservation and supply resources, and the
6 IPSP is the plan to meet those targets?

7 MR. BEALE: Yes.

8 MR. VEGH: And more specifically, the IPSP meets the
9 reliability requirements of the system through the use of
10 resources specified by the government of Ontario; right?

11 MR. BEALE: I'm not sure.

12 MR. VEGH: I'm asking a question.

13 MR. BEALE: The supply mix directive gives direction
14 to the Ontario Power Authority on how to approach their
15 integrated system plan.

16 To the extent that those directions influence how the
17 IPSP allocates resources in achieving reliability, I think
18 that would be true. I don't think that was quite what you
19 were saying, though.

20 MR. VEGH: By resources, sorry, I meant resources such
21 as conservation or generation. So the government tells the
22 OPA how much conservation it must achieve, how much
23 renewable power it must achieve, and then the OPA's
24 obligation is to meet the province's reliability
25 requirements in a manner that is consistent with the supply
26 mix identified by the government?

27 MR. BEALE: Yes, that's true.

28 MR. VEGH: And one of the resources that the

1 government uses in setting that supply mix is through the
2 OPA's conservation; right?

3 MR. BEALE: Yes.

4 MR. VEGH: And you described conservation in paragraph
5 24 as the primary resource, and I want to understand what
6 you mean by that, and I would like to refer you to the
7 IPSP, which is included at Exhibit KT1.1, where that phrase
8 is used, as well.

9 So could you turn, first, please, to page 47 of the --
10 of KT1.1, which is the Exhibit B1-1, which sets out the
11 IPSP? Do you have that?

12 MR. BEALE: I am on page 47, yes.

13 MR. VEGH: Yes. So once you have that, I would like
14 you to turn to the conservation section of the IPSP, and
15 that starts at page 6 of the IPSP evidence or page 52 of
16 the book of documents I sent out today.

17 So there is a discussion on conservation. It sets out
18 the government's conservation goals, as we've discussed,
19 numerically what they are. And then under the heading
20 "Directive Priority", line 18 says that conservation is a
21 priority resource over supply, because it is applied before
22 supply resources.

23 Is that consistent with what your understanding is in
24 paragraph 24 of your affidavit when you call it the primary
25 resource?

26 MR. BEALE: It is consistent. I would note in other
27 parts of the former IPSP, strategies related to addressing
28 constraints in both supply and transmission in constrained

1 areas were consistently -- had the view that conservation
2 would be the first resource to try to manage those
3 constraints, and other comments to the effect that where
4 those supply constraints had not yet emerged, that
5 conservation was a very useful tool to ensure that those
6 constraints did not occur in the future.

7 We're to manage that constraint.

8 MR. VEGH: You are getting to a subject that perhaps
9 we can raise later. I am trying to understand at a more
10 general level now. When you say that conservation is a
11 priority resource, it is a priority because it is applied
12 before supply resources are to meet demand requirements.
13 Is that your understanding?

14 MR. BEALE: I think that was the principle that the
15 IPSP was built on, yes.

16 MR. VEGH: And that section under the heading
17 "Directive Priority" says that the conservation takes
18 priority over supply resources, in that:

19 "...the IPSP first applies all economic and
20 feasible Conservation..."

21 I emphasize the word "feasible", because feasible is
22 specifically defined, starting at line 22, as meaning a
23 resource that can be used for planning purposes.

24 I would like to read to you the -- or for the record,
25 and perhaps you could read along, the last sentence in that
26 first paragraph, as it defines feasibility for
27 conservation. It says:

28 "In other words, the Conservation contribution

1 can make as predictable and reliable a
2 contribution to meeting resource requirements as
3 the alternative supply resource."

4 I want to see if we agree with what that means. I
5 take this to mean that for resource planning purposes,
6 conservation is applied if it is as reliable a resource as
7 is a supply resource to meet a reliability requirement. Is
8 that your understanding of what that means?

9 MR. BEALE: You packed quite a bit into that sentence.
10 Could you repeat it?

11 MR. VEGH: Okay. For resource planning, conservation
12 is applied to meet a resource requirement if it is as
13 reliable a resource as is a supply alternative?

14 MR. BEALE: And has a lower cost, I would expect.

15 MR. VEGH: I am just looking at feasible. We will
16 come back to cost. But for feasibility, if the
17 conservation resource can't meet the requirement in the way
18 that a supply resource can meet, then obviously you still
19 have to acquire the supply resource?

20 MR. BEALE: Yes.

21 MR. VEGH: Which means conservation is not an
22 alternative to the supply resource; right?

23 MR. BEALE: Not necessarily in all cases, yes.

24 MR. VEGH: Well, for planning purposes, if there is an
25 obligation to meet a reliability requirement, then you have
26 to meet that reliability requirement by a resource that can
27 achieve that level of reliability; right?

28 MR. BEALE: Conservation is a strategy that can help

1 ensure there is flexibility within that distribution system
2 to meet that reliability requirement.

3 MR. VEGH: And if it can, then you can avoid an
4 alternative supply resource?

5 MR. BEALE: You could.

6 MR. VEGH: But if it doesn't, then you don't avoid the
7 alternative supply resource?

8 MR. BEALE: Not necessarily.

9 MR. VEGH: Well, I don't understand "not necessarily".
10 If you have to meet a reliability requirement and you can't
11 meet it through conservation --

12 MR. BEALE: What --

13 MR. VEGH: -- don't you have to meet it for supply?

14 MR. BEALE: What are the circumstances it does not
15 meet the reliability requirement?

16 MR. VEGH: So the scenario I am asking you to consider
17 is: Where a conservation resource cannot meet a
18 reliability requirement, then you cannot rely on that
19 resource as an alternative to a supply resource?

20 MS. MINOR: Can I just ask for clarification of that
21 question, Mr. Vegh? Are you saying where it doesn't meet
22 it at all or where it doesn't meet it 100 percent, or what
23 do you mean by that?

24 MR. VEGH: Well, the term that the OPA uses, and I
25 thought we had agreed on, is that the conservation
26 contribution can make as predictable and reliable a
27 contribution to meeting resource requirements as the
28 alternative supply resource.

1 So do you agree with the OPA on that?

2 MR. BEALE: I would say in all, or in part, I would
3 agree with that statement. These conservation programs, if
4 they improve reliability, can improve reliability at the
5 margin. If there is a large conservation initiative that
6 can improve the reliability and in -- and by doing so not
7 require an alternative supply option, that is one
8 possibility.

9 The other possibility would be to have incremental
10 improvements which mitigate the need for taking any other
11 action to increase the supply. So it is an all, in part.
12 I am taking your question as it is all or nothing.

13 MR. VEGH: Well, a reliability requirement is all or
14 nothing; right? You either meet it or you don't?

15 MR. BEALE: Reliability requirement is a -- the way I
16 would look at a system is that the system is designed to
17 accommodate a certain amount of energy with a certain
18 amount of flexibility allowed, built into that system.

19 To the extent that demand load is lower, I would argue
20 you are improving your flexibility for that system to
21 respond. If the demand load is exceeding the flexibility
22 allowed in the system, then conservation can help bring you
23 back to -- back to a condition of -- a more stable
24 condition where you've got the flexibility.

25 MR. VEGH: So maybe we could simplify this by looking
26 at a picture. At figure 3 of the IPSP, there is a picture
27 that illustrates the impact of conservation on meeting
28 forecasted demand. Do you see that?

1 MR. BEALE: I have seen this picture before, yes.

2 MR. VEGH: Right. So if you look at the key to the
3 picture at figure 3, the top line, the dotted line is
4 forecasted demand for the system. Do you see that?

5 MR. BEALE: Yes.

6 MR. VEGH: And then underneath that top line is a
7 shaded area or a covered area, which includes various types
8 of conservation resources.

9 MR. BEALE: Mm-hmm.

10 MR. VEGH: Do you see that?

11 MR. BEALE: Yes.

12 MR. VEGH: And then the bottom triangle line is the
13 demand net of all the conservation resources.

14 Do you see that?

15 MR. BEALE: Yes.

16 MR. VEGH: So to maybe make it a little more concrete,
17 the discussion we were having, the OPA's approach, if I
18 have it right, is that it identifies what the forecasted
19 demand is. It applies conservation to meet that demand.
20 And then the -- what is remaining is a demand that is going
21 to be met by supply?

22 MR. BEALE: I would agree, yes.

23 MR. VEGH: So for conservation -- and so the part of
24 this graph which is underneath the line with the triangles
25 is going to be met by supply, because conservation
26 resources will not be contributing to meet that
27 requirement; right?

28 MR. BEALE: That forecast, yes.

1 MR. VEGH: That's right. And the OPA's job as a
2 planner is to then fill that resource requirement with
3 supply; right?

4 MR. BEALE: Right.

5 MR. VEGH: And so if a program is not -- if
6 conservation isn't -- doesn't fit within this shaded area,
7 then it won't be replaced by supply; right? Because supply
8 will be required to achieve the bottom part of that graph?

9 MR. BEALE: Okay. There is nothing -- although there
10 is nothing to say that this graph represents the absolute
11 demand reduction that will take place over that time
12 period. It could be more. It could be less.

13 MR. VEGH: But this is the OPA's best forecast at the
14 time?

15 MR. BEALE: It was the best forecast, but I think they
16 make the point several times in the document that it is a
17 scenario among many, and this is the one that they think is
18 perhaps more likely. But there is, in this forecast, an
19 acknowledgement that there is quite a bit more demand
20 management that they believe out there, beyond the target.

21 MR. VEGH: And there are a lot of different scenarios,
22 I agree with you, in the IPSP. We chose this figure. We
23 could go through any number of figures. But basically the
24 proposition is the same, that if you can't meet a
25 forecasted demand through conservation, then you have to be
26 able to meet it through supply, if you are going to achieve
27 reliability requirements?

28 MR. BEALE: Okay. Yes, I will agree with that.

1 MR. VEGH: And so I would like to go through with you,
2 then, the programs that the OPA addresses as a way to
3 meet -- or as a way, really, to fill in this shaded area in
4 figure 3.

5 That is addressed in more detail in the "Conservation"
6 chapter of the IPSP, which starts -- sorry, which starts at
7 page 81 of KT1.1, which is Exhibit D-4-1 of the IPSP.

8 MS. MINOR: Can I just ask, Mr. Vegh, what is the
9 relevance of this line of questioning? I mean, this is all
10 speculative on what may or may not happen, is it not?

11 MR. VEGH: The witness has said that the
12 conservation -- that the regulated entities cause a need
13 for and derive a benefit from the regulation, and that one
14 of the benefits derived from this regulation is in the area
15 of grid reliability generally, and specifically that
16 conservation is a contribution to grid reliability because
17 it can replace supply.

18 So I am asking questions about how conservation does,
19 in fact, contribute to grid reliability as a matter of
20 replacing supply.

21 And that is what the IPSP addresses, how does
22 conservation meet reliability requirements. So I hope that
23 helps.

24 So I am at D-4-1, looking at the specific part of the
25 IPSP that deals with conservation. It starts at page 81 of
26 the evidence.

27 And there is a lot of detail, obviously, in the
28 discussion on what the plan is to meet the conservation,

1 the requirements. And then there are a number of tables
2 setting out different programs, and I have identified these
3 to your counsel as ones that I was going to just point you
4 to, Mr. Beale, not in any real detail, but just to lay them
5 out.

6 We have table 16, which describes the mass market
7 program, table 17 describing commercial institutional
8 market programs, 18, industrial market programs, 19,
9 customer-based generation. Then finally, table 20, which
10 addresses committed conservation resources for the period
11 2008 to 2010.

12 Again, I won't take you through all of the programs
13 and categories of programs listed here, but you will see
14 that these were the programs that are identified as
15 committed to meet the conservation targets for 2008 to
16 2010, and they're broken down by conservation categories.

17 Is that a fair description?

18 MR. BEALE: Yes.

19 MR. VEGH: And so these categories, you will recall --
20 I don't think I have to take you back to it -- but you
21 recall in figure 3, when we looked at the impact of
22 conservation on peak demand, you had different colours
23 within the shade, and each of those shaded colours had
24 different components or different conservation programs.
25 Some were efficiencies, some were demand management,
26 customer-based generation, fuel-switching, et cetera.

27 You see kind of the cross-reference at table 20 to the
28 allocation of those demand reductions by reference to those

1 conservation categories.

2 I am just trying to show the linkage. Do you
3 understand that linkage?

4 MR. BEALE: Got it.

5 MR. VEGH: And now we go to how the OPA actually
6 discussed or addressed the programs referred to in your
7 evidence.

8 And this talks about -- this starts at page 42 of D-1-
9 1, or page 122 of the book of materials.

10 Starting at line 6, it talks about programs under the
11 Green Plan and refers to home energy retrofit. Is that the
12 HESP program?

13 MR. BEALE: This is a number of other programs, of
14 which the retrofit program was one.

15 MR. VEGH: Okay. And emphasis on solar thermal
16 systems, is that the OSTHI program?

17 MR. BEALE: That's the OSTHI program, yes.

18 MR. VEGH: Now, starting at line 10, then, the
19 evidence says -- or the OPA says that these are good
20 complements to existing and contemplated programs.

21 So first of all, these are complements to existing and
22 contemplated programs; they're not included in the programs
23 that we have looked at in these tables? Is that your
24 understanding, as well?

25 MR. BEALE: True. Yes, that's right. They would have
26 been way too soon for them to have been included, or their
27 impact measured.

28 MR. VEGH: Well, they're obviously discussed in the

1 IPSP, but not -- these programs aren't included in the
2 IPSP?

3 MR. BEALE: Tight.

4 MR. VEGH: So they were aware of these programs,
5 obviously, because they referred to them.

6 It goes on to state: "At this time" -- is that
7 they're good complements, and then at line 12, it says:

8 "At this time, it is difficult to accurately
9 predict the level of increased conservation
10 attributable to the Green Plan, which includes
11 these programs."

12 So it is fair to say that these programs are not being
13 relied upon in the IPSP to achieve the conservation targets
14 in the IPSP; is that right?

15 MR. BEALE: That's true.

16 MR. VEGH: And so when we go back to figure 3, which
17 you and I spent a little time on, figure 3 in B-1-1, and we
18 looked at, we said, Well, conservation is going to be used
19 to meet the space between the dotted line at the top and
20 the triangle line at the bottom, and anything below that
21 line is going to be met by supply resources.

22 These programs are not being used to offset supply
23 resources in the IPSP, are they?

24 MR. BEALE: Over that planning period, no, which isn't
25 to say they couldn't be under some subsequent planning
26 period.

27 MR. VEGH: So I guess it is possible theoretically.
28 But right now, it is not displacing any supply under the

1 IPSP; right?

2 MR. BEALE: There is no IPSP.

3 MR. VEGH: Well, this is the IPSP.

4 MR. BEALE: It's a proposal. It doesn't have --
5 affect anything meaningful. The government has determined
6 that they would like to develop a new long-term energy
7 plan, which will inform the next IPSP planning process.
8 The extent to which these documents, when that next
9 document is produced, have common features or not, I really
10 don't know.

11 MR. VEGH: You're saying it may be that under a future
12 IPSP these programs will be -- could theoretically be used
13 to offset supply, but under this IPSP they're not being
14 used?

15 MR. BEALE: I think it is not a question of whether a
16 government program would be considered in the same way as
17 an OPA program.

18 OPA programs have particular ways that they are
19 delivered, particular valuation and verification
20 requirements that they need to do through their own
21 programs.

22 What is also clear is that there are conservation
23 initiatives that happen outside of the OPA programs. OPA
24 is aware that it is just not things that they do that cause
25 electricity conservation.

26 There are other programs that I know, they talk to us
27 frequently about the effect of codes and standards on
28 meeting the target. They talk to the federal government in

1 terms of getting some better calibration of the performance
2 of their programs and what that might mean to the
3 electricity system in Ontario.

4 And it would be not unusual for them to look to any
5 programs that the province was delivering, as well, to
6 determine whether or not they were having an effect that
7 they could count on in their system planning.

8 MR. VEGH: Oh, I understand that. Thank you. So
9 when, for example, we go back to figure 3 and you talk
10 about non-OPA programs contributing to meeting conservation
11 requirements, and, so, for example, this category of energy
12 efficiency, which I guess is the largest category in figure
13 3, of types of programs that will lead to conservation,
14 energy efficiency -- that includes all sort of programs.
15 It includes OPA programs, but it also includes codes and
16 standards; right?

17 MR. BEALE: Right.

18 MR. VEGH: Pardon me?

19 MR. BEALE: Yes.

20 MR. VEGH: Yes. So my only point is that the programs
21 we're talking about that are funded by this levy are not
22 included in the OPA's conservation plan as meeting the peak
23 requirements for -- or as being a conservation resource
24 being used to meet peak requirements?

25 MR. BEALE: But they couldn't be. They couldn't be.
26 Over the planning period that this document was put
27 together and for the planning period that it was to remain
28 alive before the next iteration began, these programs were

1 not significantly in place for them to be accounted for.

2 It would be the choice of the OPA whether or not to
3 allow them or integrate them into their rollups of what
4 they believed to be happening in the electricity market.

5 But certainly for this document, for the forecast that
6 probably went into creating this chart, probably eight
7 months before this document, those programs would not have
8 been available for them to have even a speculative opinion
9 about what impact they might have.

10 MR. VEGH: So you are reading a lot into that one
11 sentence from the OPA, which says whether -- the fact that
12 they're not relying on these programs to meet the
13 conservation target. I want you to leave that aside for a
14 minute, your interpretation of why that is.

15 I just want you to agree -- I want your evidence on
16 the facts here, which is that those programs are not being
17 used to meet the conservation target under the IPSP and,
18 therefore, under the IPSP that peak demand requirement has
19 to be met by supply.

20 Will you agree with me that far?

21 MR. BEALE: Yes, I would agree with that, unless they
22 had evidence of other demand reduction programs, whether
23 they came from the federal government or the province or
24 from the municipal government that was documenting and
25 showing other demand reductions which perhaps would
26 influence the decision on the supply --

27 MR. VEGH: Right. Do you have any evidence that the
28 programs that you're talking about will actually reduce

1 peak demand? Do you have any evidence on that?

2 MR. BEALE: I have no evidence with me, no.

3 MR. VEGH: No. Now, the next category of benefits you
4 refer to after grid reliability, is a category called
5 "environmental concerns".

6 And I take it that your point here is that there are
7 environmental benefits that result from replacing coal-
8 fired generation with a cleaner supply mix?

9 MR. BEALE: There are results from conservation and
10 supporting the government's objective to get off coal, yes.

11 MR. VEGH: Yes. Now, first, you would agree with me
12 that all Ontarians benefit from a cleaner supply mix, not
13 just electricity consumers?

14 MR. BEALE: Yes.

15 MR. VEGH: And, second, we just discussed the IPSP on
16 its -- in its treatment of conservation.

17 I take it that you are aware that another goal of the
18 IPSP was to find a way to replace coal with a cleaner
19 supply mix?

20 MR. BEALE: That's fair enough, yes.

21 MR. VEGH: And if we could go back to the IPSP
22 document, so that is Exhibit B-1-1 from the IPSP, we talked
23 about the conservation section. There is also a section on
24 coal replacement starting at page 67 of the materials, or
25 page 21 of the -- of Exhibit B-1-1.

26 If you go to the top of page 22, there is figure 11.
27 There is a description there or a picture there of how
28 other resources are being -- other resources that are

1 existing, committed or planned are being used to meet
2 renewable -- reliability requirements in the absence of
3 coal.

4 Do you see that picture, figure 11?

5 MR. BEALE: I do.

6 MR. VEGH: Now, we have already had the discussion
7 that the conservation resources that are included in figure
8 11 that are being used to replace coal are not funded by
9 the conservation levy; right?

10 MR. BEALE: That's true.

11 MR. VEGH: Now, we go down a couple of lines from this
12 document and at line 15 -- sorry, starting at line 14, it
13 talks about the need to replace coal, which was part of the
14 IPSP directive. It says: We have applied as a primary
15 resource conservation, we have applied renewable power,
16 nuclear, et cetera, and it says:

17 "The only remaining resource with the
18 characteristics to replace these
19 contributions..."

20 That's the contribution of coal:

21 "...is gas-fired generation."

22 Do you see that?

23 MR. BEALE: I see it.

24 MR. VEGH: So the environmental benefits of replacing
25 coal are not being contributed to by the programs that are
26 funded by this levy; right? They're being met by gas and
27 planned resources?

28 MR. BEALE: So let me just be sure I understand what

1 you're saying.

2 If the OPA, through its resource acquisition programs,
3 have a certain increment of demand savings which are
4 applied to this chart and other parts of the economy, in a
5 more voluntary way, reduce their demand for electricity in
6 a measurable way, that would not be counted as a useful
7 contribution to this chart?

8 I mean, are we saying that these are the only
9 resources, conservation resources, that could be used to
10 build up the chart, in terms of supporting coal phase-out?
11 It strikes me that there is a lot more activity in the
12 economy related to conservation which is apart from
13 programs that either the OPA runs or the provincial
14 government runs or the federal government runs.

15 And to the extent that you can measure those things,
16 it would have a positive contribution to this chart.

17 MR. VEGH: Well --

18 MR. BEALE: I'm suggesting that our programs are of
19 that calibre, modest as they may be. They're in the right
20 direction. They're not adding to the problem. They're
21 subtracting from the problem.

22 MR. VEGH: I think for planning purposes, what we have
23 just gone through demonstrates that the OPA is saying that
24 conservation for its own sake may be laudable, but for
25 planning purposes, to replace a supply resource,
26 conservation has to actually make a predictable
27 contribution; otherwise you are going to have to acquire
28 the supply resource; right? We have agreed with that?

1 MR. BEALE: Mm-hmm.

2 MR. VEGH: So it is not any old conservation program
3 out there that might manage any old demand at any old time,
4 but if you are going to not replace -- if you are going to
5 not acquire a supply resource, then you have to be
6 confident that the conservation resource will have that
7 impact?

8 MR. BEALE: True.

9 MR. VEGH: And so it is true that this chart doesn't
10 identify every conceivable -- or program that the
11 government might come up with. It includes -- what it does
12 include, though -- and I think you would agree -- are the
13 programs that can be relied upon to offset the requirement
14 for coal-fired generation. And the --

15 MR. BEALE: But I -- I go back to another point.

16 The OPA, I think, does do or make efforts to find out
17 where else conservation savings are coming from that they
18 can also rely on.

19 They may not account for all of it. They may prefer
20 to discount it by a certain amount in order to meet
21 whatever tests they have, in terms of its persistency and
22 its reliability.

23 But these programs that are shown on this chart, if
24 they are intended to reflect only OPA actions, I think it
25 will be understating the amount of electricity conservation
26 that takes place in the economy. Their problem: can they
27 reliably find it and measure it and be confident in
28 applying it?

1 MR. VEGH: Yes. So these programs, as we have
2 discussed in discussing the conservation evidence, the
3 programs included in figure 11 include things such as codes
4 and standards which are not OPA programs, but it does not
5 include the programs that this levy is funding, and so
6 therefore, the requirements of meeting the coal replacement
7 have to be met by other resources, such as gas?

8 MR. BEALE: Inevitably, how much and --

9 MR. VEGH: And so my only point --

10 MR. BEALE: How much and at what point.

11 MS. MINOR: I am just asking if the witness could be
12 allowed to finish his answer.

13 MR. VEGH: It might help if you speak more directly
14 into the mic. I am not trying to interrupt you.

15 MR. BEALE: I will try to get this right.

16 MR. VEGH: And so my point is under the IPSP, the
17 programs that you are referring to are not being used for
18 planning purposes to replace coal?

19 MR. BEALE: Frankly, I can't tell you to what extent
20 the OPA is using this document at all, as they are moving
21 towards coal phase-out.

22 MR. VEGH: I am saying in the plan itself, the
23 programs that we have talked about are not being used to
24 replace coal?

25 MR. BEALE: As of eight years -- or three or four
26 years ago, it appears not.

27 What they're using now, I can't comment on. This is a
28 very old document.

1 MR. MILLAR: Mr. Vegh, I hesitate to interrupt.

2 We are at about 11:00 o'clock now. We would be
3 looking to take a break shortly. If you are near
4 finishing, we could probably do that, but otherwise,
5 perhaps we could break?

6 MR. VEGH: I am near finishing.

7 MR. MILLAR: Okay.

8 MR. VEGH: I wanted to discuss with you the final area
9 of benefits that you claim for these programs.

10 And this is actual or -- no, sorry. Sorry.

11 This is reduced cost, and your discussion on reduced
12 cost starts at paragraph 42. And at paragraph 43, you say
13 that:

14 "Where HESP and OSTHI result in load reduction
15 during peak demand periods, incidental benefits
16 accrue since more system demand can be satisfied
17 using non-peak resources, which are less
18 expensive."

19 First, we have confirmed that you have no evidence on
20 whether HESP and OSTHI result in load reduction during peak
21 demand?

22 MR. BEALE: We can infer that there is some. I
23 would --

24 MR. VEGH: So you are inferring that, but you have no
25 evidence?

26 MR. BEALE: We can infer. We don't have the kind of
27 load profiles that we would need to have in order to be
28 able to clarify that, but the number of the technologies

1 that are used in HESP, for example, are technologies that
2 you would expect would have an impact at peak.

3 Air conditioners --

4 MR. VEGH: Do you have any analysis -- sorry.

5 MR. BEALE: -- and variable-speed drives.

6 MR. VEGH: Do you have any analysis on --

7 MS. MINOR: Can I just interrupt? Could the witness
8 please be allowed to finish his answer? And with the
9 interruptions, I am not sure how that is going to show up
10 on the transcript. So it may bear repeating.

11 MR. BEALE: What would you like, Mr. --

12 MR. VEGH: I would like to know whether you have done
13 any analysis, whether you have any analysis on the -- on
14 how these programs will result in reduction during peak
15 demand periods.

16 MR. BEALE: What we have for every measure that is
17 part of the calculation of the 53-odd-million dollars, we
18 have an estimate of the energy saved from that measure.
19 That, in combination globally with load profiles, which we
20 don't really have for these classes of customers, can give
21 us an estimate of, certainly, energy saved, kilowatt-hours.

22 It is a little harder to make that leap to megawatts
23 without those load profiles.

24 MR. VEGH: Right. So you don't have the load
25 profiles, so you don't have an estimate?

26 MR. BEALE: We have an expectation that -- an
27 expectation that the measures that are being taken will
28 have an effect at peak. But we can't -- I don't think we

1 can measure that.

2 MR. VEGH: Well, it is measurable, but you haven't
3 measured it?

4 MR. BEALE: We haven't the resources to do as thorough
5 a job as we would like to do.

6 We could try to give you estimates. I don't know if
7 that would help.

8 MR. VEGH: But you indicated that you would require
9 load profiles to do that, and you haven't done that. So
10 you have no -- you have no estimate? In fact, you have no
11 analysis on peak demand reduction resulting from these
12 programs; right?

13 MS. MINOR: That is not what he said, Mr. Vegh. Don't
14 put words in his mouth.

15 Do you want -- and he offered to give you some
16 estimates and how they were calculated. I don't know if
17 you wanted those or not. You might clarify that.

18 MR. VEGH: I have asked you to provide -- well, can
19 you provide me with any analysis that has been taken out on
20 the peak demand reductions that we brought about by these
21 programs?

22 MR. BEALE: Yes. Well, I will undertake to do that.

23 MR. MILLAR: JT1.2.

24 **UNDERTAKING NO. JT1.2: TO PROVIDE ANALYSIS OF PEAK**
25 **DEMAND REDUCTIONS BROUGHT ABOUT BY THESE PROGRAMS.**

26 MR. VEGH: Now, just on that paragraph 43, you say
27 that "...system demand can be satisfied using non-peak
28 resources, which are less expensive" than peak.

1 First, as a general matter, you're not saying here
2 that non-peak resources are always less expensive than peak
3 resources?

4 MR. BEALE: Typically.

5 MR. VEGH: Pardon me?

6 MR. BEALE: Typically.

7 MR. VEGH: Well, wind as a non-peak resource, gas as a
8 peak resource, wind is more expensive than gas; right?

9 MR. BEALE: [Witness nods head.]

10 MR. VEGH: So in fact, peak resources can be less
11 expensive than non-peak resources; right?

12 MR. BEALE: I am not familiar enough to give you an
13 absolute answer one way or another.

14 MR. VEGH: I would like to just finish with a couple
15 of questions on the idea of lowering costs through
16 conservation.

17 This will take us back, again, to Exhibit B-1-1 of the
18 IPSP. We have talked about -- so I am going back to page 6
19 of B-1-1, or page 52 of the evidence.

20 We have talked about feasible conservation and what
21 that means. I would like to now talk for a minute about
22 economic conservation and what that means, because the
23 priority is to use conservation that is economic and
24 feasible, prior to using supply.

25 And the second sentence under the heading "Directive
26 Priorities" states that:

27 "Economic conservation is defined as conservation
28 that is more cost-effective than supply

1 resources, as determined by applying a total
2 resource cost test."

3 Are you familiar with that term, "total resource cost
4 test"?

5 MR. BEALE: Yes.

6 MR. VEGH: And the total resource cost test is passed
7 when the cost of conservation is less than the cost of
8 supply?

9 MR. BEALE: Yes.

10 MR. VEGH: That's your understanding?

11 MR. BEALE: A value greater than one.

12 MR. VEGH: So as a general proposition, not all
13 conservation programs are more cost-effective than supply;
14 only some of them are?

15 MR. BEALE: As a rule that would be true. There could
16 be not cost-effective conservation under those -- that
17 test.

18 MR. VEGH: And the TRC is the methodology that is
19 commonly used to make that determination?

20 MR. BEALE: In the utility world, yes.

21 MR. VEGH: In the utility world and in the planning
22 world of the OPA?

23 MR. BEALE: Hmm-hmm.

24 MR. VEGH: And the OPA programs, as we have just
25 discussed, do go through the TRC. You are aware of that?

26 MR. BEALE: Yes.

27 MR. VEGH: And LDC programs have to pass a TRC; you
28 are aware of that?

1 MR. BEALE: They will.

2 MR. VEGH: Now, the programs you have been referring
3 to, HESP and OSTHI, they have not been subjected to a TRC;
4 is that correct?

5 MR. BEALE: That's correct.

6 MR. VEGH: And so there is no evidence that these
7 programs are more cost-effective than supply; right?

8 MR. BEALE: Also no evidence that they're not.

9 MR. VEGH: Pardon me?

10 MR. BEALE: There is also no evidence that they're
11 not. We haven't done the test.

12 MR. VEGH: No evidence these programs would pass any
13 sort of TRC; right?

14 MR. BEALE: We haven't done a TRC test on these
15 programs.

16 MR. VEGH: Thank you. I have no further questions.

17 MR. MILLAR: Thank you, Mr. Vegh. I suggest we take
18 our morning break now and return at 25 after 11:00, at
19 which time, Mr. Warren, will you be next?

20 MR. WARREN: Yes.

21 MR. MILLAR: Ms. Minor?

22 MS. MINOR: In terms of our questions, I just don't
23 know what the most appropriate thing is if Mr. Vegh is
24 leaving.

25 MR. MILLAR: You mean re-direct?

26 MS. MINOR: Yes.

27 MR. MILLAR: Mr. Vegh, do you care if you are not here
28 when re-direct takes place.

1 MR. VEGH: I could read them on the record, I think.
2 I am here until 1 o'clock.

3 MS. MINOR: Okay.

4 MR. MILLAR: We will break until 11:25. Thank you.

5 --- Recess taken at 11:08 a.m.

6 --- On resuming at 11:28 a.m.

7 MR. MILLAR: Okay. I think we will get started,
8 everyone. Mr. Warren, are you ready to proceed?

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

10 MR. WARREN: Good morning, Mr. Beale.

11 MR. BEALE: Good morning.

12 MR. WARREN: Some of the areas that I was going to
13 cover have been covered by my friend, Mr. Vegh. I
14 apologize if I cover some of the same ground, but it will
15 just be to hopefully just to complete some gaps.

16 Can I take you, first, to the opening couple of
17 paragraphs of your affidavit, Mr. Beale?

18 As I understand the chronology, you have been,
19 particularly for the last four years, employed in the
20 capacity as director of energy efficiency and innovative
21 technology, branch renewables and energy efficiency; is
22 that correct?

23 MR. BEALE: The title has changed, but the functions
24 are the same, yes.

25 MR. WARREN: So that would be roughly the period 2006
26 to 2010; is that correct?

27 MR. BEALE: October -- yes. October 2006 to October
28 2010.

1 MR. WARREN: And as I understand a response that you
2 gave to my friend, Mr. Vegh, and as we will get to. A
3 moment ago, the programs which are now called HESP and
4 OSTHI, their progenitors, the original versions of those
5 were introduced some time in the middle of 2007; is that
6 correct?

7 MR. BEALE: Yes.

8 MR. WARREN: And did you have a role in the
9 development, planning and implementation of those
10 progenitor programs?

11 MR. BEALE: Yes.

12 MR. WARREN: Did you have a role, Mr. Beale -- and if
13 so, what it was -- in developing the Green Energy and Green
14 Economy Act? And I am thinking in particular of what is
15 now -- has become sections 26.1 and 26.2 of the Energy
16 Board Act, that is the special purpose fund provisions.

17 MR. BEALE: I was Acting Assistant Deputy Minister for
18 both the renewables and the energy efficiency parts of the
19 discussions on the development of the Green Energy and
20 Green Economy Act.

21 MR. WARREN: And did you have a role, Mr. Beale, in
22 the planning and development of what is Ontario Regulation
23 66/10, which implements this particular levy which is the
24 subject of this motion?

25 MR. BEALE: I was the director responsible for it,
26 yes.

27 MR. WARREN: All right. Now, you have covered a bit
28 of this with Mr. Vegh, and I just want to fill in a couple

1 of blanks.

2 The programs that have become HESP and OSTHI were
3 begun some time in 2007, I believe you said; is that
4 correct?

5 MR. BEALE: That's right.

6 MR. WARREN: And if I could ask you to turn up the
7 booklet of materials which we have provided -- perhaps they
8 might be marked as an exhibit?

9 MR. MILLAR: Yes. KT1.2, the booklet of materials
10 from CCC.

11 **EXHIBIT NO. KT1.2: CCC BOOKLET OF MATERIALS.**

12 MS. MINOR: This is for identification?

13 MR. WARREN: Yes.

14 MS. MINOR: Thank you.

15 MR. WARREN: Mr. Beale, all of the documents which are
16 contained in here are taken from the web pages of the
17 Ontario government, either the Ministry of Energy or the
18 premier's office.

19 Just to complete the chronology, if you could turn up
20 tab 2 of this material, this is a news release from the
21 office of the premier. It is dated the 21st of June, 2007.

22 Do you see that?

23 MR. BEALE: I do.

24 MR. WARREN: And if I go to the second page of it, the
25 first bullet item says:

26 "A home energy retrofit program that will provide
27 up to \$5,000 for home energy retrofits that
28 include Energy Star qualified furnaces for

1 heating, solar, domestic water systems and
2 insulation."

3 Do you see that?

4 MR. BEALE: Yes.

5 MR. WARREN: And is that program what ultimately
6 became the HESP?

7 MR. BEALE: That program on the retrofit side, along
8 with the program that was delivering audits, were rolled in
9 together to form the HESP.

10 MR. WARREN: And if we combine the two components of
11 it, the retrofit and the audit, has anything of substance
12 changed from the point when they were introduced in June of
13 2007 to the end of the period of the levy, which is 2010
14 some time?

15 MR. BEALE: In terms of its administration?

16 MR. WARREN: In terms of its administration and
17 substance and what programs were offered, that kind of
18 thing. Anything changed?

19 MR. BEALE: Just the funding levels.

20 MR. WARREN: All right. There is also on that same
21 page, about five bullets down, I quote:

22 "Launching a program for the industrial,
23 commercial and institutional sector to encourage
24 the use of solar thermal equipment."

25 MS. MINOR: Excuse me. We just missed your reference.

26 MR. WARREN: I'm sorry. It's on the same page, page 2
27 of 3 of the premier's press release. It is about five
28 bullet items down from the quote I put to Mr. Beale a

1 moment ago.

2 Do you have it?

3 MR. VIRANI: Which bullet number was it?

4 MR. BEALE: Third from the bottom.

5 MR. WARREN: Third from the bottom. Sorry.

6 It says:

7 "Launching a program for the industrial,
8 commercial and institutional sector to encourage
9 the use of solar thermal equipment."

10 And is that what became -- or is that the Osth --
11 whatever it is program?

12 MR. BEALE: It is OSTHI, with a lisp.

13 MR. WARREN: OSTHI. Is that the program, OSTHI?

14 MR. BEALE: That's the program.

15 MR. WARREN: Other than a change in the funding level,
16 which I will get to in a moment, has that program changed
17 in any material way from this date in June of 2007 to the
18 end of the period of the levy, which is some time in 2010?

19 MR. BEALE: No.

20 MR. WARREN: All right. If I look just above this --
21 I am on the same page, 2 of 3 -- in the text that continues
22 on the top of page 2 of 3, I read:

23 "These programs will be funded through money set
24 aside in the 2007 budget."

25 Am I correct that the programs, at least at this
26 stage, were funded from the general revenue?

27 MR. BEALE: That's correct.

28 MR. WARREN: All right. I believe you responded to

1 Mr. Vegh earlier today to say that the first of the money
2 on these programs was actually paid out early in 2008; is
3 that correct?

4 MR. BEALE: That would be about right.

5 MR. WARREN: All right. And throughout 2008, were
6 they funded through from general revenue?

7 MR. BEALE: Yes.

8 MR. WARREN: And throughout 2009-2010, were they
9 funded through general revenue? Up until the introduction
10 of Ontario Regulation 66/10?

11 MR. BEALE: Well, let me just take this a little
12 sideways.

13 In the year 2008 and 2009, we were engaged in
14 developing and passing the Green Energy Act, which, as you
15 know, had certain provisions related to this special
16 purpose charge.

17 As a matter of program administration, the ministry
18 required a budget so that the program could be administered
19 and payments made to eligible homeowners. So it received
20 an appropriation from the Minister of Finance.

21 MR. WARREN: In the period 2009-2010 and that
22 budgetary period, which I think is March 31st to April 1,
23 2009-2010 -- is that correct? That's the budget period?

24 MR. BEALE: Mm-hmm.

25 MR. WARREN: The monies actually paid out under these
26 programs were paid from general revenue; is that correct?

27 MR. BEALE: They were paid from the ministry's
28 appropriation, yes.

1 MR. WARREN: And what the levy will do is recapture
2 some of the money that was paid out, or capture from a
3 portion of the market, the electricity market; is that
4 correct?

5 MR. BEALE: It recovers those funds.

6 MR. WARREN: All right. Thanks.

7 Your counsel was kind enough to provide me yesterday
8 with some Memoranda of Understanding between the -- with
9 the federal government and NRCan, and I wonder, Mr. Beale,
10 if we could just identify those now.

11 They're referred to in your affidavit.

12 Ms. Minor, the first one that I have is entitled:

13 "A Memorandum of Agreement for the
14 EcoENERGY/OSTHI programs for renewable heat, made
15 as of November 30, 2007 between Her Majesty the
16 Queen In Right of Canada and Her Majesty the
17 Queen In Right of Ontario."

18 Is that correct?

19 MR. BEALE: Yes. It is a complementary one for the
20 ecoEnergy Retrofit Program.

21 MR. WARREN: And the ecoEnergy Retrofit Program, that
22 one is dated December 20th, 2007; is that correct?

23 MR. BEALE: I believe so.

24 MR. WARREN: Might those be marked as exhibits?

25 MR. MILLAR: Mr. Warren, do we have copies of those
26 documents?

27 MR. WARREN: Unless my friend has additional copies.
28 I don't.

1 MR. MILLAR: I will mark them, and we will arrange to
2 have copies made over the lunch break.

3 MR. WARREN: The first one is for the --

4 MS. MINOR: Thank you very much.

5 MR. WARREN: -- EcoENERGY/OSTHI program. It's dated
6 November 30th, 2007. Could be mark that?

7 MR. MILLAR: Yes. That will be KT1.3.

8 **EXHIBIT NO. KT1.3: MEMORANDUM OF AGREEMENT FOR**
9 **ECOENERGY/OSTHI PROGRAM, DATED NOVEMBER 30, 2007.**

10 MR. WARREN: The second is a Memorandum of Agreement
11 regarding the ecoEnergy Retrofit Homes Program, and that is
12 dated December 20th, 2007.

13 MR. MILLAR: KT1.4.

14 **EXHIBIT NO. KT1.4: MEMORANDUM OF AGREEMENT FOR**
15 **ECOENERGY RETROFIT HOMES PROGRAM, DATED DECEMBER 20,**
16 **2007.**

17 MR. WARREN: Can I just stay with the most recent of
18 the two exhibits, which is KT1.4?

19 If I could take you to the third recital paragraph, it
20 says, and I quote:

21 "Whereas the Ministry, as part of its
22 conservation initiatives, is committed to
23 promoting energy efficiency and conservation in
24 the housing sector of Ontario by providing
25 incentives for home energy audits and home energy
26 retrofits through its Ontario Home Energy
27 Efficiency Program, OHEEP, launched March 23rd,
28 2007 and Home Energy Retrofit Program launched

1 June 20, 2007..."

2 Can we understand those three programs to be the ones
3 that ultimately became HESP?

4 MR. BEALE: Yes.

5 MR. WARREN: Okay. Were these two memoranda of
6 understanding to govern the relationship between NRCan, the
7 federal government and your ministry with respect to the
8 operation of these two programs?

9 MR. BEALE: The operation and administration of the
10 programs, yes.

11 MR. WARREN: Now, was there, with respect to at least
12 at this date -- and I am talking about the 2007-2008
13 period. Was there any regulatory agency that was required
14 to approve the applications for funding under either of
15 these programs?

16 MR. BEALE: The funding approval came through our
17 respective treasury boards.

18 MR. WARREN: But individual applications, consumer A
19 applies for -- goes through the home audit retrofit
20 program, applies for funding. Was there anything
21 regulatory agency that had to approve the funding, or was
22 it purely an administrative process? You met the criteria
23 and you got the funding?

24 MR. BEALE: Rebates were paid on applications.

25 MR. WARREN: The --

26 MS. MINOR: Can I just ask for a question just to
27 clarify that, make sure I understand it. Were you asking
28 whether there was any outside agency or whether a formal

1 agency or what the approval process was? I am not quite
2 sure.

3 MR. WARREN: I am distinguishing, Mr. Beale, in
4 response to your counsel's question, between an approval
5 that might be required, for example, by an independent
6 regulatory agency, like the Ontario Energy Board, as
7 opposed to an administrative process within the ministry;
8 that you met the federal requirements for the auditor, the
9 federal government approved what the auditor had done, set
10 the criteria, so as long as you met the administrative
11 processes, the cheques were issued. Is that fair?

12 MR. BEALE: That's fair.

13 MR. WARREN: All right. Thanks.

14 MS. MINOR: Thank you.

15 MR. WARREN: Thanks.

16 Mr. Vegh has covered off the relationship between
17 NRCan and the ministry, so I won't go back over that.

18 There are two other documents which are referred to in
19 your affidavit. One is something called an Ontario Solar
20 Thermal Heating Incentive, and these are agreements, are
21 they, between the -- well, perhaps you can tell me what
22 they are.

23 MR. BEALE: These refer to the two documents that you
24 were requesting --

25 MR. WARREN: No. I have another document that was
26 provided by your counsel. It is entitled "Ontario Solar
27 Thermal Heating Incentive". I am not sure what that
28 document is.

1 MR. BEALE: It is part of the affidavit?

2 MR. WARREN: Yes. It was produced yesterday.

3 MR. BEALE: At Exhibit C, there is a -- basically, a
4 Q&A on the OSTHI program.

5 MS. MINOR: Can we just clarify? We produced two
6 documents entitled "Contribution Agreements", one for solar
7 water and one for solar air.

8 MR. BEALE: I am just trying to establish what
9 documents are you looking for.

10 MR. WARREN: Perhaps I can give him copies of each and
11 you can just tell me what they are.

12 MS. MINOR: Yes.

13 [Passes documents to the witness]

14 MR. BEALE: The agreements? Yes, those are
15 agreements.

16 MR. WARREN: Can you tell me what those -- describe
17 what those agreements are, Mr. Beale?

18 MR. BEALE: These are the contribution agreements
19 between the ministry and the proponents that are installing
20 the solar thermal or solar air heating system.

21 They define the terms and conditions of payment. They
22 provide for a minimum amount of information on the
23 description of the project, the statement of work --

24 MR. WARREN: Perhaps those two documents --

25 MR. BEALE: -- definition of eligible costs,
26 definition of ineligible costs, what reports are required
27 and on what conditions the province will pay the proponent
28 on completion of the project.

1 MR. WARREN: Perhaps those two documents might be
2 marked as exhibits, Mr. Millar. The first one is an
3 Ontario Solar Thermal Heating Incentive contribution
4 agreement dated the 27th of October 2010.

5 MR. MILLAR: KT1.5.

6 **EXHIBIT NO. KT1.5: ONTARIO SOLAR THERMAL HEATING**
7 **INCENTIVE CONTRIBUTION AGREEMENT DATED OCTOBER 27,**
8 **2010.**

9 MR. WARREN: And the second is Ontario Solar Thermal
10 Heating Incentive dated the 9th day of November 2010, and
11 this I am told applies to water. Is that solar water?

12 MR. BEALE: There are two systems that are eligible,
13 solar thermal air systems and solar thermal water systems.

14 MR. MILLAR: That will be KT1.6.

15 **EXHIBIT NO. KT1.6: ONTARIO SOLAR THERMAL HEATING**
16 **INCENTIVE DATED NOVEMBER 9, 2010.**

17 MR. MILLAR: We don't have copies of these.

18 MS. MINOR: We will provide those to you.

19 MR. MILLAR: Thank you.

20 MR. WARREN: Can we just -- do you have what has been
21 marked as KT1.5, which is the solar air agreement? Do you
22 have that in front of you?

23 MR. BEALE: I do.

24 MR. WARREN: Could I take you to -- they don't appear
25 to be paginated. I will take you to what I have as page 3.
26 I am looking at "Method of Payment", section 6.2. It says:

27 "The following documents are to be received by
28 the Ministry from NRCan in order that the

1 Ministry may consider the request for payment."

2 Roman (i) is:

3 "Confirmation of NRCan's approval for a request
4 for funding by the recipient under the NRCan
5 contribution agreement."

6 Do I understand it, Mr. Beale, that as soon as NRCan
7 approved payments, that that was sufficient for your
8 purposes to trigger your payment, as well?

9 MR. BEALE: The administrative protocol between us
10 allowed for their technical review of applications, and
11 their technical review of the final project documentation
12 to confirm that it met the terms of their conditions.

13 We were satisfied that their internal review
14 processes, their internal audit processes and their
15 management oversight was sufficient to match our
16 requirements in the province.

17 So if they approved a project for payment, then we
18 deemed it to be eligible for payment.

19 MR. WARREN: Thank you. Now, these programs, the
20 progenitor describing them to HESP and OSTHI, you were, you
21 indicated earlier, around at the time that those programs
22 were planned and developed; is that the case?

23 MR. BEALE: That's true.

24 MR. WARREN: And can you tell me, Mr. Beale, if there
25 were any -- or what reports or analyses were undertaken
26 with respect to the estimated cost of these programs and
27 their -- any estimates of savings that might be achieved,
28 conservation targets? Were there any reports, analyses,

1 studies that were done?

2 MR. BEALE: Not to my knowledge.

3 MR. WARREN: And you would have been aware of them,
4 had there been; is that right? You are nodding your head.

5 MR. BEALE: I'm sorry. Yes, I would have been aware
6 of them. Our instructions were to offer a program which
7 matched these two federal programs.

8 MR. WARREN: For purposes of budget allocation,
9 obtaining money for this, would there not have been some
10 kind of cost-benefit analysis that would have been done so
11 that the Minister of Finance thought this was a good idea
12 to fund these programs?.

13 MR. BEALE: The Minister of Finance directed the
14 programs to be funded. So I don't know what extra work he
15 would have preferred to have had.

16 Our cost estimation and budgeting process had more to
17 do with understanding the nature of the demand for
18 applications. We knew what measures were eligible. We
19 didn't know precisely how many homeowners would take
20 advantage of it. So it was really a question of
21 participation rates.

22 And I would say over the first year or so, it was a
23 bit of a learning and discovery phase to determine what
24 those participation rates would be like. It was a new
25 federal program, as well, so there was not much history to
26 go on.

27 MR. WARREN: The decision to allocate money for this
28 particular program, how was the amount that was to be

1 allocated for the funding of this program arrived at; do
2 you know? Sorry, let me distinguish --

3 MR. BEALE: It was announced by the premier, so I
4 think perhaps I shouldn't speculate.

5 MR. WARREN: But from your purposes, you did not
6 provide the premier's office or anybody else with an
7 estimate of what the costs were going to be for the
8 program?

9 MR. BEALE: I would have given estimates on what I
10 thought the costs could be.

11 MR. WARREN: And were those in written form?

12 MR. BEALE: I can't recall, frankly.

13 MR. WARREN: Can you undertake to determine if they
14 were and to produce those estimates for us?

15 MS. MINOR: We can use best efforts to determine what
16 is there. That's the best we can do. I'm sorry, it was
17 on.

18 I'm sorry, we will make best efforts to determine
19 whether there were any written estimates.

20 MR. MILLAR: Thank you. JT1.3.

21 **UNDERTAKING NO. JT1.3: TO ADVISE IF WRITTEN ESTIMATES**
22 **EXIST FOR PROGRAM FUNDING ALLOCATION.**

23 MR. WARREN: I am going to take you, then, to the
24 fourth tab of the book of materials which has been marked
25 as Exhibit KT1.2. It is the book of materials which I
26 provided to you.

27 Fourth tab is a release which we found on the website
28 of your ministry, and it is entitled: "Solar technologies

1 help build Ontario's Green Economy." That is dated
2 December 7th, 2009.

3 And the first paragraph reads:

4 "Ontario has dramatically increased the incentive
5 available to organizations that install solar hot
6 water systems."

7 Do you see that?

8 MR. BEALE: Yes.

9 MR. WARREN: Then the next paragraph says:

10 "The Ontario Solar Thermal Heating Incentive,
11 OSTHI, will now provide up to \$400,000 per
12 project, an increase of five times over the
13 previous \$80,000 maximum. Matched by the federal
14 government, applicants can now obtain up to
15 \$800,000, important support for projects that can
16 cost as much as 1.5 million or more."

17 Have I read that correctly?

18 MR. BEALE: You have.

19 MR. WARREN: Were you involved, Mr. Beale, in the
20 decision to increase the funding available under OSTHI?

21 MR. BEALE: I was involved in recommending to the
22 minister and the minister's office that we match a recent
23 increase in the program funding levels by Natural Resources
24 Canada to that amount.

25 MR. WARREN: And for the -- was there an estimate of
26 what this increase to \$400,000 per project, what the total
27 costs would be to the Ontario government for this?

28 MR. BEALE: Not specifically. We were aware of -- at

1 least my staff were aware, through their discussions with
2 NRCan, of several large projects for solar thermal
3 technology that could not go forward at the funding levels
4 that the program had originally been approved for.

5 I don't know that there was any specific number of
6 projects we were hoping to attract. Program experience had
7 been that the projects were much smaller than what we had
8 expected to be getting through the program. And there was
9 a desire to have a record of more substantial projects,
10 which could benefit from the program.

11 MR. WARREN: When you say that you made a
12 recommendation to the minister, was there a written
13 recommendation or analysis that underlay this
14 recommendation to the minister?

15 MR. BEALE: I am sure there would have been.

16 MR. WARREN: Okay. Can you undertake to produce that,
17 please?

18 MS. MINOR: I think we will take that under
19 advisement. I am not sure how relevant any of this is to
20 the actual question before the Board.

21 MR. WARREN: So I take it that you will take it under
22 advisement?

23 MS. MINOR: Yes.

24 MR. WARREN: And let me know whether or not it will be
25 produced or not?

26 MS. MINOR: Yes.

27 MR. MILLAR: So that will be the undertaking, and that
28 is JT1.4.

1 **UNDERTAKING NO. JT1.4: TO PRODUCE ANY WRITTEN**
2 **RECOMMENDATION OR ANALYSIS PROVIDED TO THE MINISTRY**
3 **FOR INCREASE IN OSTHI FUNDING LEVELS.**

4 MS. MINOR: It might be helpful to have on the record
5 what Mr. Warren considers the relevance of that to be with
6 respect to the question before the Board.

7 MR. WARREN: The relevance of the issue of the
8 material that I have asked for is that at the time that
9 this program was developed, it was being funded, as I
10 understand it, Mr. Beale, from general revenue.

11 And that being the case, I am trying to track the
12 decision-making process that transformed some portion of
13 OSTHI from a program that was funded by general revenue to
14 one that was funded by the levy. I want to understand the
15 reasoning that goes from one category to the other.

16 MS. MINOR: And how is that relevant to the question
17 at hand?

18 MR. WARREN: Because it may be relevant, Ms. Minor,
19 depending on how we want to respond to your assertion that
20 this is a regulatory charge.

21 Now, can I take you back a few months, sir, to the
22 introduction of the Green Energy and Green Economy Act,
23 which, as I recollect, was in or around the middle of 2009;
24 correct?

25 MR. BEALE: Final reading was in May, I believe. The
26 introduction was in February.

27 MR. WARREN: And as I understand your testimony, you
28 were involved in the development of that legislation, at

1 least as far as what became sections 26.1 and 26.2 of the
2 Ontario Energy Board Act; correct?

3 MR. BEALE: Yes.

4 MR. WARREN: Okay. Now, did you provide advice to
5 your -- to the minister or anybody else with respect to the
6 content of those two sections?

7 MR. BEALE: Along with counsel, sure.

8 MR. WARREN: Okay. And can you tell me, sir, how the
9 programs that are -- set out in 26.2, subsection (2). It
10 says:

11 "The following are the special purposes for which
12 amounts collected under section 26.1 relating to
13 assessments are paid."

14 And then there is a listing of six or thereabout
15 programs. How were those purposes derived?

16 MR. BEALE: I think I copied that from my own records.
17 I think they were largely modelled off of documentation
18 from other jurisdictions that did use things like special
19 purpose charges or public benefit charges, largely in the
20 United States. It is not uncommon for those jurisdictions
21 to have charges like this attached to rates, to fund
22 conservation and renewable programs.

23 Some do research and development. Some do education-
24 related outreach kind of programs. Generally programs
25 which are -- it has been felt the market is not in a
26 position to provide on its own, for whatever jurisdictional
27 reason occurs in their jurisdiction.

28 MR. WARREN: And was there, underlying the selection

1 of this criteria, indeed, the introduction of these two
2 provisions, was there any study of what the possible cost
3 recovery implications were? Did you have an amount in
4 mind, for example, that you were going to recover under
5 these?

6 MR. BEALE: No.

7 MR. WARREN: No? Okay. You indicated that you did
8 provide analyses of some kind in connection with the
9 introduction of these two sections; is that correct?

10 MR. BEALE: Yes.

11 MR. WARREN: Okay. May I have an undertaking to
12 provide those, please?

13 MS. MINOR: We will take that under advisement, too.

14 MR. WARREN: Now, just returning, if we can --

15 MR. MILLAR: Pardon me, Mr. Warren. I will just give
16 that a number, JT1.5.

17 **UNDERTAKING NO. JT1.5: TO PROVIDE ANY STUDY DONE ON**
18 **COST RECOVERY IMPLICATIONS.**

19 MR. WARREN: Thanks. Thanks, Mr. Millar.

20 Now, in order to give effect to -- as I understand,
21 Mr. Beale -- to the special levy provisions in 26.1 and
22 26.2, there had to be a regulation directing the recovery
23 of the funds; is that correct?

24 MR. BEALE: That's correct.

25 MR. WARREN: Okay. Now, if I can take you back very
26 briefly -- I apologize for jumping around -- to tab 4 of
27 the materials I gave you, this was the announcement of the
28 dramatic increase in the funding under the OSTHI program.

1 MR. BEALE: I'm sorry, which tab?

2 MR. WARREN: Tab 4.

3 Now, at the time that this announcement was made,
4 there had been no regulation passed pursuant to 26.1 and
5 26.2; correct?

6 MR. BEALE: That's correct.

7 MR. WARREN: So may I take it that at the time that
8 this announcement was made, the intention was to recover
9 the additional costs, indeed, the costs of the OSTHI
10 program out of -- to pay the funds out of general revenue;
11 is that fair?

12 MR. BEALE: The intention for both programs was to pay
13 the cost of the rebates from our appropriation. The
14 intention, the expectation was that we would have a
15 regulation which would allow cost recovery for a portion of
16 those programs.

17 MR. WARREN: When you say "the expectation" whose
18 expectation was that?

19 MR. BEALE: I would say the ministry as a whole.

20 MR. WARREN: Okay. And when did that expectation
21 arise?

22 MR. BEALE: Well, I would have to double-check, but at
23 the time of estimates, when the ministry was given its --
24 an appropriation, there was an estimate of what the
25 potential cost recovery could be.

26 MR. WARREN: When was that estimate of potential cost
27 recovery given?

28 MR. BEALE: I don't know what the -- I don't actually

1 see some of these documents, so I don't know.

2 MR. WARREN: Were you involved in --

3 MR. BEALE: It would have been within the estimates
4 process.

5 MR. WARREN: Which would have been when,
6 chronologically?

7 MR. BEALE: It probably started in November of 2008
8 and concluded some time in the spring of 2009.

9 MR. WARREN: So was it the case that when this
10 announcement of dramatic increase in funding for OSTHI was
11 made, that there was a plan in place to recover some or all
12 of the costs of this dramatic increase from, for example,
13 electricity to ratepayers?

14 MR. BEALE: I can say that there was an expectation,
15 but it becomes quickly apparent, when you are working in
16 the government, that you don't have anything until it is
17 signed by LRC in the government and cabinet.

18 MR. WARREN: What I am trying to get at, sir, is at
19 the time this announcement was made of this funding
20 increase, was there a plan in place to recover some portion
21 of this or all of the cost using the mechanisms available
22 in 26.1 and 26.2?

23 MS. MINOR: With respect, I think he has answered that
24 question. He has distinguished between what in his mind is
25 a plan and an expectation and a firm requirement.

26 So I am not sure if you are asking for anything else.

27 MR. WARREN: Ms. Minor, he hasn't answered it to my
28 satisfaction, and I apologize for --

1 MR. BEALE: Let's try again.

2 MR. WARREN: Let's try again, okay, Mr. Beale.

3 As far as you know, sir, was there a specific plan in
4 place to recover some or all of the costs of OSTHI and HESP
5 at the time that this announcement was made in November of
6 2009?

7 MR. BEALE: I do get kind of hung up on the notion of
8 plan, because I don't want you to put more words into my
9 mouth than I will on my own.

10 During the time that the Green Energy and Green
11 Economy Act was at the House, and at the time that the
12 Green Energy and Green Economy Act was passed by the House,
13 there was an expectation that we would be able to move
14 forward with the cost recovery under section 26.1 and
15 section 26.2.

16 There hadn't been a decision at that time whether it
17 would be that year, or some subsequent year. There had not
18 been a decision about the manner of the assessment, nor a
19 lot of the implementation requirements that would be
20 required to go into the actual cost recovery.

21 There was anticipation - and I just will use the word
22 "anticipation" - that cost recovery for the ministry's
23 appropriation for these two projects was likely to occur.

24 MR. WARREN: I'm sorry, I didn't hear the last
25 portion, was likely to occur?

26 MR. BEALE: Was likely to occur within the fiscal year
27 2009-2010.

28 MR. WARREN: And at the risk of raising my friend's

1 ire, were those expectations reduced to writing at some
2 point?

3 MR. BEALE: I don't know to what extent these things
4 are. Frankly, I don't know. You have a copy of our
5 estimates materials. I don't think it was actually sent by
6 you, but --

7 MR. WARREN: Mr. Thompson.

8 MR. BEALE: Mr. Thompson.

9 MR. WARREN: The older gentleman to my right.

10 MR. BEALE: The distinguished gentleman also wearing
11 glasses.

12 MR. WARREN: Is that the only difference between us,
13 Mr. Beale? Let me step to the window and jump out at this
14 point.

15 [Laughter]

16 MR. BEALE: We do have copies of the estimates for all
17 of those years. Where that offset line occurred, I don't
18 know, within the bowels of the Ministry of Finance.

19 MR. WARREN: We certainly can agree, can we not, as we
20 look at what is at tab 4, which is the announcement of this
21 dramatic increase in funding, that there was no mention in
22 that that there would be cost recovery from, for example,
23 ratepayers, electricity ratepayers; correct?

24 MR. BEALE: Nor could there be.

25 MR. WARREN: Now --

26 MR. BEALE: You understand there could not be?

27 MR. WARREN: Because it hadn't come into place yet;
28 right?

1 MR. BEALE: Right.

2 MR. WARREN: Right.

3 MR. BEALE: You might also be interested to know that
4 because of that massive increase in the size of the project
5 funding, there were no projects that are subject to this
6 regulation that would have received anything close to those
7 amounts.

8 MR. WARREN: Now, if I can take you to the final tab,
9 which is tab 5 in my materials, this is, again, taken from
10 the web page of the Ministry of Energy and Infrastructure,
11 as it then was.

12 And the first line of the top says on:

13 "On March 31, 2010 the federal government
14 announced funding cuts to the ecoEnergy Retrofit
15 Homes Program."

16 And then going to numbered item 1 on the same page, I
17 read:

18 "Due to the sudden nature of the federal
19 announcement to cancel a partnership program,
20 Ontario is reviewing its options to create and
21 deliver effective conservation programs to
22 Ontarians."

23 Do you see that?

24 MR. BEALE: I do.

25 MR. WARREN: Okay. Now, when, sir, would you have
26 been aware of the federal government's decision to
27 terminate its participation in the ecoEnergy Retrofit Homes
28 Program?

1 MR. BEALE: I remember it very well. March 30th.

2 MR. WARREN: The day before this announcement?

3 MR. BEALE: Yes.

4 MR. WARREN: So much for cooperative federal --

5 MR. BEALE: Yes. We have our issues.

6 [Laughter]

7 MR. WARREN: Now, then let me add this. I am trying
8 to get a fix on this.

9 Did the decision of the federal government to
10 terminate the program have any role at all in the decision
11 to introduce Ontario Regulation 66/10? Are they related in
12 any way?

13 MR. BEALE: No.

14 MR. WARREN: Then let me take you to what I understand
15 to be the chronology of Ontario Regulation 66/10. It was,
16 as the term is made, the 24th of February, filed the 12th
17 of March and was in force on the same day, the 12th of
18 March.

19 Will you take that subject to check?

20 MR. BEALE: I have that in front of me, yes.

21 MR. WARREN: Okay. When was the planning started for
22 what became Ontario Regulation 66/10?

23 MR. BEALE: It was a complicated regulation. I would
24 say six months prior to that.

25 MR. WARREN: Okay. Now, some regulations, Mr. Beale -
26 - there was one recently dealing with the global adjustment
27 mechanism that were published in the environmental registry
28 for comment. You may be familiar with that particular

1 regulation I am talking about. Okay.

2 This one, 66/10, was not published in the
3 environmental registry for comment; correct?

4 MR. BEALE: That's correct.

5 MR. WARREN: Okay. Was there a reason why it was not
6 published for comment?

7 MR. BEALE: I would have to check with counsel. My
8 understanding is that at the time that this was filed, that
9 requirement was not in place. But I would have to check
10 with counsel to confirm that.

11 MR. WARREN: Can you confirm that?

12 MS. MINOR: Yes.

13 MR. WARREN: Thank you. Now, you say that it had been
14 in the works. That is my crude term for it. It had been
15 in the planning for some six months, you thought?

16 MR. BEALE: Round numbers, yes.

17 MR. WARREN: Okay. You were involved in the process
18 of planning for it; is that correct?

19 MR. BEALE: In the process of defining what would be
20 in the regulation and how it should be administered, yes.

21 MR. WARREN: And did you prepare any studies or
22 reports or analyses with respect to the regulation, in
23 terms of what it should contain, what its cost recovery
24 should be, that kind of thing?

25 MR. BEALE: Specific documents? I would have to
26 check. We had extensive consultations with the Ontario
27 Energy Board Staff. We had extensive consultations with
28 the Electricity Distributors Association and several LDCs.

1 Along the way, we had quite a few consultations with our
2 colleagues in the gas industry.

3 So there was an extensive consultation process, mostly
4 through meetings and discussions and talking about it. In
5 terms of actual records of those things, I am not sure. I
6 would have to check.

7 MR. WARREN: Can you check and, if they exist, can you
8 provide them to me, please?

9 MS. MINOR: Sorry, can you just repeat that, Mr.
10 Warren, what you are requesting?

11 MR. WARREN: I am looking, Ms. Minor, for any ministry
12 reports or analyses that supported the creation and
13 implementation of Ontario Regulation 66/10. I can't be any
14 more precise than that, I'm sorry.

15 MS. MINOR: Perhaps we might discuss that off line.

16 MR. WARREN: Off line, okay.

17 MS. MINOR: And I will take that under advisement for
18 the moment.

19 MR. WARREN: Thanks.

20 Mr. Beale, with apologies to you, I simply forgot to
21 transmit this last night, but I provided to your counsel a
22 copy of a document called "Ontario Regulatory Policy."

23 Perhaps your counsel could provide you with a copy of
24 that.

25 MR. VIRANI: He has it.

26 MR. WARREN: I apologize for not sending it yesterday.
27 It occurred to me late last night.

28 MR. MILLAR: Mr. Warren, I propose we mark that KT1.7.

1 This is a document entitled, "Ontario Regulatory Policy."

2 **EXHIBIT NO. KT1.7: DOCUMENT ENTITLED, "ONTARIO**
3 **REGULATORY POLICY" DATED APRIL 1, 2010.**

4 MR. WARREN: Are you familiar with this document, Mr.
5 Beale?

6 MR. BEALE: I haven't read it, so I am not sure if I
7 am familiar with it.

8 MS. MINOR: Could I interrupt again? I'm sorry, Mr.
9 Warren. Could you just identify where this comes from?
10 Just for the record, I mean.

11 MR. WARREN: For the record, it comes from the -- as
12 far as I know, the website of the Ministry of the Attorney
13 General, but I will check that at the lunch break and let
14 you know, Ms. Minor. As far as I know, it comes from the
15 Ministry of the Attorney General's website.

16 Do you want to take a moment, Mr. Beale, and review
17 it?

18 MR. BEALE: Okay.

19 MS. MINOR: Sorry. We might just note for the record
20 this is also April 2010.

21 MR. WARREN: To be precise, April 1, 2010.

22 MR. BEALE: So I think this essentially confirms my
23 earlier answer that at the time we were doing our
24 regulation, the requirement to post was not in place.

25 MR. WARREN: I want to -- I appreciate that, Mr.
26 Beale, at the time, because the chronology of when Ontario
27 Regulation 66/10 came into effect, it was in effect March
28 12th, some three weeks before this policy is dated;

1 correct?

2 MR. BEALE: It appears to be.

3 MR. WARREN: But it does, Mr. Beale, set out certain
4 policy -- certain principles which the Ontario government
5 believed should apply to regulations which have an effect
6 on business? Can we agree with that?

7 MR. BEALE: I think so, yes.

8 MR. WARREN: Okay. Can we look, for example, at --
9 under the "Scope" it says:

10 "The policy applies to regulations that affect
11 business made or approved by the Lieutenant
12 Governor-in-Council or by the minister, subject
13 to part 3 of the Legislation Act 2006."

14 And it says:

15 "A regulation that affects business includes but
16 is not limited to a measure that has one or more
17 of the following effects."

18 The first bullet item:

19 "The measure changes the cost of compliance."

20 Would you agree that Ontario Regulation 66/10 affects
21 the cost of compliance? It imposes a charge on, among
22 others, businesses; correct?

23 MR. BEALE: That cost of compliance isn't borne by the
24 LDC. The cost is borne by their ratepayers. To the extent
25 that there are costs associated with administering that
26 recovery, those costs were to be allowed by the Ontario
27 Energy Board.

28 So it is a long answer to say I'm not sure I would

1 agree.

2 MR. WARREN: My understanding, Mr. Beale -- and you
3 know more about this than I would -- that the cost recovery
4 mechanism contemplated by -- put in place by Ontario
5 Regulation 66/10 has the IESO paying money to the
6 government, and the IESO recovers that from, among others,
7 its business customers; is that right?

8 MR. BEALE: Right.

9 MR. WARREN: All right. So to that extent, the
10 regulation would appear to have an effect on the cost of
11 compliance? Can we not agree on that, at a common sense
12 level, Mr. Beale?

13 MR. BEALE: At a common sense level, I am not sure
14 that the costs would be meaningful enough to warrant that
15 kind of attention. It's one small line, one small amount,
16 on a bill which probably contains 35 other larger amounts.

17 MR. WARREN: All right. You are going to perhaps
18 trivialize it in that way, but can we agree it is a cost of
19 compliance, Mr. Beale? Right?

20 MR. BEALE: For the sake of argument, sure.

21 MR. WARREN: Right. Let's turn to page 2 of 4 and
22 look at the principles. It says, principle number 1:

23 "Regulations must be justified by a solid
24 business case, serve clearly stated public policy
25 goals and be effective in achieving those goals."

26 Is there a solid business case that you are aware of
27 underlying Ontario Regulation 66/10?

28 MR. BEALE: There wasn't a requirement to have one.

1 MR. WARREN: So I take it the answer is no, there
2 isn't one?

3 MR. BEALE: There is not a requirement to have one.

4 MS. MINOR: With respect, are you referring to this
5 particular document?

6 MR. WARREN: No. I am asking if there was a business
7 case underlying Ontario Regulation 66/10.

8 MS. MINOR: A business case within the meaning of
9 what?

10 MR. WARREN: Do you understand what a business case
11 is, Mr. Beale?

12 MR. BEALE: Yes.

13 MR. WARREN: Okay. Was there a business case
14 underlying Ontario Regulation 66/10?

15 MR. BEALE: Well, perhaps in our context, business
16 cases are done in slightly different ways.

17 When we move forward for approvals for these sorts of
18 things, we do have conversations with cabinet committees.
19 We do have conversations with legs and regs committees. A
20 lot of these things have further conversations among
21 ministers at cabinet.

22 So I think it would be unfair to say that the pros and
23 the cons of moving forward with this regulation had not
24 been identified or scrutinized.

25 So to the extent that that can be seen as a proxy for
26 a business case, with a decision made by our political
27 masters, then I think we do make that case.

28 MR. WARREN: Was that proxy reduced to writing?

1 MR. BEALE: Inevitably, cabinet submissions and
2 submissions to legislation and regulations committee are,
3 yes.

4 MR. WARREN: And may I get an undertaking to provide
5 that document?

6 MS. MINOR: We will take that under advisement.

7 MR. WARREN: Now, the last thing I want to take you to
8 is on page 3 of 4.

9 MR. MILLAR: Mr. Warren, again I hate to interrupt.
10 We will mark that JT1.6.

11 **UNDERTAKING NO. JT1.6: TO PROVIDE ANY WRITTEN PROXY**
12 **FOR A BUSINESS CASE UNDERLYING ONTARIO**
13 **REGULATION 66/10.**

14 MR. WARREN: Three of 4 talks about a regulatory
15 assessment. That's a -- you would agree with me, Mr.
16 Beale, that that is a term commonly used, certainly in
17 federal government circles, in assessing what the impact of
18 a regulation would be? Do you agree with me?

19 MR. BEALE: I'm sorry, I'm not quite sure which letter
20 you are on.

21 MR. WARREN: Under the heading at the bottom of page 3
22 of 4, "Regulatory Impact Assessment."

23 MR. BEALE: "Regulatory Impact Assessment." Yes?

24 MR. WARREN: Do you understand what a regulatory
25 impact assessment is?

26 MR. BEALE: Yes.

27 MR. WARREN: Okay. Was there a regulatory impact
28 assessment or some proxy for it prepared in connection with

1 the Ontario Regulation 66/10?

2 MR. BEALE: I would have to check the legislation, the
3 regs approval form.

4 MS. MINOR: We will take that under advisement.

5 MR. BEALE: But that would have been a form to LRC.

6 MR. MILLAR: JT1.7.

7 **UNDERTAKING NO. JT1.7: TO PROVIDE REGULATORY IMPACT**
8 **ASSESSMENT OR PROXY PREPARED IN CONNECTION WITH THE**
9 **ONTARIO REGULATION 66/10.**

10 MR. WARREN: If you just bear with me, I'm sorry, Ms.
11 Minor. I just want to check and see whether my remaining
12 questions have been covered off by Mr. Vegh.

13 Was there any direction at any point in the time
14 leading up to Ontario Regulation 66/10 from the Ministry of
15 Finance to collect as much money as possible to, for
16 example, deal with the forecast budget deficit? To your
17 knowledge?

18 MS. MINOR: I am not sure what the relevance of that
19 is.

20 MR. WARREN: Well --

21 MS. MINOR: I mean, this is at large?

22 MR. WARREN: We're trying to determine, among other
23 things, Ms. Minor, whether or not this thing is a
24 regulatory charge, or simply a way of getting some money
25 for a government that doesn't have enough.

26 MS. MINOR: And the determination of whether this is a
27 regulatory charge is a very specific, jurisprudentially
28 established test.

1 MR. WARREN: Well, you and I will argue about what the
2 relevance will be.

3 My question to him was: Was the objective of 66/10 to
4 collect money to deal with the government's budget
5 shortfall?

6 MS. MINOR: And I am directing him not to answer that
7 question.

8 MR. WARREN: As I understand the response that you
9 gave to Mr. Vegh, the amounts that are being collected
10 under 66/10 do not recover -- as I understand your
11 affidavit, as well -- do not recover the full cost of the
12 HESP and the OSTHI programs; is that correct?

13 MR. BEALE: Yes, that's correct.

14 MR. WARREN: Okay. Do I understand -- and that some
15 of those costs would be associated, for example, with
16 programs that, for example, affect gas-fired heating or
17 generation; is that correct?

18 MR. BEALE: Elements of those programs that would
19 affect gas, yes.

20 MR. WARREN: And the government had originally
21 announced its intention or given its indication that it was
22 going to recover some portion of the funds in those
23 programs from the natural gas utilities; is that correct?

24 MR. BEALE: I don't recall any public statements to
25 that effect. It may be true.

26 MR. WARREN: You understood there were discussions
27 certainly within the natural gas utilities about
28 recovering --

1 MR. BEALE: Absolutely, yes.

2 MR. WARREN: Okay. And the amount that was discussed
3 was approximately \$100 million; is that correct?

4 MR. BEALE: In that order, yes.

5 MR. WARREN: Okay. And the decision has been taken,
6 as I understand it -- it's been announced as Ms. Minor said
7 it is something announced in the house the government is
8 not going to proceed with that; is that correct?

9 MR. BEALE: As per Hansard. I won't paraphrase what
10 the minister did or didn't say.

11 MR. WARREN: Let's assume, for the sake of discussion,
12 what the minister has said in the House is correct, that
13 the levy will not continue for the next fiscal period. On
14 that assumption, am I correct, then, that this levy applies
15 to only to electricity and only for one fiscal period;
16 correct?

17 MR. BEALE: The discussion we're having is the levy in
18 this regulation for that specific year. We were only ever
19 talking about that.

20 MR. WARREN: Thank you very much. Those are my
21 questions, subject to any responses that you may be
22 forthcoming or not forthcoming from your counsel. Thank
23 you.

24 MR. MILLAR: Thank you, Mr. Warren. We are about 20
25 after 12:00 now. Unless anybody wants a very short cross
26 that they wanted to get in before lunch so they can leave,
27 I would propose that we break for lunch. Mr. Mondrow or
28 Ms. DeMarco, did either of you wish to go or would you

1 prefer to wait until after lunch? I think ordinarily Mr.
2 Thompson would be next, but he has something of around an
3 hour or more.

4 MR. MONDROW: I will wait.

5 MR. MILLAR: I propose we break -- well, why don't we
6 come back at 1:30. Thank you.

7 MS. MINOR: Just before we end, I am just wondering if
8 we might have some estimates from counsel as to how long
9 they will be altogether? I was rather hopeful I might make
10 a 3:30 meeting. I don't know if that is going to be
11 possible.

12 MR. MILLAR: Mr. Thompson.

13 MR. THOMPSON: I think I will be about an hour.

14 MR. MILLAR: Ms. DeMarco?

15 MS. DeMARCO: I should be about 20 minutes, maximum.

16 MR. MILLAR: Mr. Mondrow?

17 MR. MONDROW: The same as Ms. DeMarco, 20 minutes,
18 maximum.

19 MR. MILLAR: Mr. Cass, anything from you?

20 MR. CASS: I am not sure, Mr. Millar, but if there
21 was, it would be very short, five minutes, perhaps.

22 MR. MILLAR: We are looking at about two hours, then,
23 maybe a little less. I hope that assists.

24 MS. MINOR: Well, it's going to be close.

25 MR. MILLAR: Okay. We will come back at 1:30.

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

27 --- On resuming at 1:35 p.m.

28 MR. MILLAR: Okay, it is just past 1:30, so I propose

1 we get started again.

2 Absent any preliminary matters, Mr. Thompson, you're
3 next.

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

5 MR. THOMPSON: Yes, Mr. Beale, could I just start with
6 following up a couple of points that Mr. Warren was asking
7 you about, and in particular about your experience?

8 The affidavit indicates that you were with the
9 ministry from '84 to '97, which I make to be 13 years. And
10 then you were away for a while, then you have been back
11 there for four years, which I make to be between 2006 and
12 2010.

13 Have I got that straight?

14 MR. BEALE: That's right.

15 MR. THOMPSON: Okay. Could you just give us a little
16 bit more about your professional background, and what you
17 did before going to the ministry, and what you did in
18 between ministry appointments?

19 MR. BEALE: Well, I have a bachelor of commerce from -
20 - how far back would you like me to go?

21 MR. THOMPSON: Well, start with your university
22 degree, and we'll --

23 MR. BEALE: I have a bachelor of commerce from Queen's
24 University.

25 MR. THOMPSON: That's okay.

26 DR. BOOTH: That's okay? You won't hold that against
27 me?

28 MR. THOMSON: Well --

1 MR. BEALE: I have a master's in environmental studies
2 from York University.

3 I had a number of consulting positions following my
4 university, leading to some time with the Ontario Energy
5 Corporation, which it was called then, dealing with
6 alternative fuels and energy efficiency.

7 I went from that position at the Ontario Energy
8 Corporation to the Ministry of Energy, and had a number of
9 positions related to technology development, research and
10 development, and policy advice on energy efficiency demand
11 management, leading to several executive positions in those
12 same areas, delivering programs.

13 I did leave the government in early 19 -- early --
14 late 1997, did some additional consulting work, and my wife
15 and I started a language school for teaching English as a
16 second language in Toronto, for four years, and then I
17 returned to the ministry.

18 MR. THOMPSON: Thanks very much.

19 Just before I go on perhaps I could have this
20 affidavit of Mr. Hughes marked as the next exhibit, that I
21 understand will be Exhibit KT1.8.

22 MR. MILLAR: Yes, but what -- that's this document?

23 MR. THOMPSON: Well, it is actually this one, but Bob
24 Warren has --

25 MR. MILLAR: Oh, I'm sorry. Yes, very good. So the
26 affidavit of Mr. Hughes, yes, KT1.8.

27 **EXHIBIT NO. KT1.8: AFFIDAVIT OF MR. HUGHES.**

28 MR. THOMPSON: Now, Mr. Beale, I wanted to start my

1 cross-examination with you dealing with some of the
2 allegations in your affidavit about the existence of a
3 regulatory scheme.

4 Since you and your wife taught English, when you use
5 the word "scheme" what do you mean?

6 MS. MINOR: Could I interrupt? Perhaps you might
7 explain what you mean by "allegations" if we're going to
8 get fussy about English.

9 MR. THOMPSON: Well, assertions. Would you be happier
10 with that? Statements about the existence of a regulatory
11 scheme.

12 I guess hearing nothing, my question is, when you use
13 the word "scheme", Mr. Beale, what do you mean?

14 MR. BEALE: Well, let me just say that this part of
15 the documentation is intended to give some background,
16 demonstrating that the particular item that we're talking
17 about here is only one small part of a fairly
18 comprehensive, complex and detailed code of regulation.

19 I won't quibble with the word "scheme" if you've got a
20 better word. I don't think it really makes much difference
21 to the point that we would like to make.

22 MR. THOMPSON: No. I wasn't trying to quibble about
23 it, and I looked it up in the Oxford dictionary and the
24 first meaning is: "A systematic plan or arrangement for
25 attaining some particular object or putting a particular
26 idea into effect."

27 Is that the sense in which you are using the word in
28 the affidavit?

1 MR. BEALE: I really don't want to get into an
2 argument about what this word means, frankly, or a debate
3 or a discussion. I think you understand the point that
4 we're trying to make.

5 MR. THOMPSON: Well, I think I do, but there's -- I'm
6 sorry, there is also a second meaning --

7 MS. MINOR: The regulations speak for themselves. I
8 don't think you need to cross-examine on this area, Mr.
9 Thompson, unless you've got some reason for doing so that
10 you can let us know.

11 MR. THOMPSON: Well, the second meaning in the Oxford
12 dictionary is: "A secret or underhand plan."

13 And are you using the word in that sense in your
14 affidavit?

15 MS. MINOR: Is this going to be a serious cross-
16 examination, Mr. Thompson?

17 MR. THOMPSON: Yes. Could you answer the question,
18 please?

19 MR. BEALE: I won't respond to that kind of a
20 question. Thank you.

21 MR. THOMPSON: All right. Now, as you mentioned a
22 moment ago in the -- in your evidence, the regulatory
23 scheme -- and that's your word -- that is postulated in
24 this affidavit, is part, as I understand it, of a very
25 broad scheme, and you describe -- use the phrase "broad
26 regulatory scheme" in paragraph 5 of your affidavit; is
27 that fair?

28 MR. BEALE: That's fair.

1 MR. THOMPSON: Okay. You indicate the two components
2 of this scheme are the two particular programs you have
3 discussed with others.

4 MR. BEALE: I would say those are two small elements,
5 two small programs, among other programs, also within a
6 broad regulatory treatment.

7 MR. THOMPSON: Okay. I accept that. Further on in
8 the affidavit, you say in paragraph 10, for example, that:
9 "Changes in the passage of the Energy
10 Restructuring Act in 2004 comprise only one part
11 of the code of energy regulation."

12 Do you see that? This is page 3, paragraph 10 in the
13 first line.

14 MR. BEALE: Yes.

15 MR. THOMPSON: And then you describe as other parts in
16 the paragraph following, the Green Energy and Green Economy
17 Act, which was a piece of 2009 legislation; is that
18 correct?

19 MR. BEALE: Yes.

20 MR. THOMPSON: Then another piece, another part of the
21 regulatory scheme is the Electricity Act 1998?

22 MR. BEALE: Yes.

23 MR. THOMPSON: And that was part of the OEB Act --
24 sorry, that was part of the Energy Competition Act, along
25 with the OEB Act 1998.

26 Can you confirm that?

27 MR. BEALE: I will look to counsel to confirm for me,
28 if it's possible.

1 MS. MINOR: Is the question when was the OEB Act -- or
2 when was the Ontario Energy Board Act promulgated?

3 MR. THOMPSON: No. The Ontario Energy Board Act, what
4 I was suggesting was the Ontario Energy Board Act 1998 and
5 the Electricity Act 1998 were two of the schedules to the
6 Energy Competition Act that was enacted in 1998.

7 MS. MINOR: What's the question?

8 MR. THOMPSON: Well, do you agree with that?

9 MS. MINOR: If he says he doesn't know, the answer is
10 he doesn't know.

11 MR. THOMPSON: All right. In paragraph 11, you refer
12 to the code of regulation being complemented by a number of
13 additional requirements, and you refer to the requirements
14 created by the Board and the IESO.

15 Can I take it that these are also part of the complex
16 scheme -- complex regulatory scheme you are describing in
17 your affidavit?

18 MR. BEALE: Yes.

19 MR. THOMPSON: And these codes consist of the
20 Transmission System Code -- I am reading from paragraph
21 11 -- the Distribution System Code, the Retail Settlement
22 Code.

23 Those are, as I understand it, all Ontario Energy
24 Board codes; is that fair?

25 MR. BEALE: Understood to be so.

26 MR. THOMPSON: Then there is another item you
27 mentioned, the IESO Market Rules, that was enacted by the -
28 - or put forward by the IESO pursuant to the Electricity

1 Act, if I read your affidavit correctly; is that fair?

2 MR. BEALE: That's fair.

3 MR. THOMPSON: Am I safe to understand or can I
4 understand that these codes and the IESO Market Rules were
5 promulgated after the passage of the OEB Act and
6 Electricity Act?

7 In other words, their vintage is in around the 2000
8 time frame. Do you know?

9 MR. BEALE: Frankly, no.

10 MR. THOMPSON: Okay. Another piece of the parts of
11 the regulatory scheme is the Energy Restructuring Act,
12 which you referred to in paragraph 7, which is a 2004 piece
13 of legislation. Am I correct?

14 MR. BEALE: I understand so, yes.

15 MR. THOMPSON: Then following that legislation we have
16 another two pieces of the regulatory scheme, which are the
17 small pieces, the Home Energy Savings Program and the OSTHI
18 program that you have discussed with others; correct?

19 MR. BEALE: Those are two programs.

20 MR. THOMPSON: That are part of the multifaceted
21 scheme?

22 MR. BEALE: I would characterize the regulation as
23 part of the regulatory scheme. The programs are a means of
24 the government to meet objectives from these different
25 pieces of legislation.

26 MR. THOMPSON: All right. Then we have the Green
27 Energy and Economy Act which was promulgated in 2009, I
28 understand. That's another part of this broad regulatory

1 scheme that you have described; fair?

2 MR. BEALE: Fair.

3 MR. THOMPSON: Okay. So can I take it, then, that
4 this regulatory scheme that you are postulating in the
5 affidavit has at least seven parts, the OEB Act, 1998, the
6 codes under the OEB Act - those are the three codes we
7 discussed - the IESO market rules, the Energy Restructuring
8 Act, the two programs and the Green Energy and Green
9 Economy Act.

10 MR. BEALE: I am not sure I would characterize the two
11 programs as constituting a significant part of the
12 regulatory scheme. I think we're talking about the
13 regulation that allows cost recovery. The two programs,
14 like any other program, whether it be run by the province
15 or run by the OPA, are initiatives to implement the
16 objectives of different things.

17 MR. THOMPSON: Okay. Well, I didn't think I
18 characterized it that way. I thought you had in paragraph
19 5 of your affidavit. You say two components of Ontario's
20 regulatory scheme include these two programs, but should
21 that be reworded?

22 MS. MINOR: The regulations, the legislation speak for
23 themselves.

24 If you want to make arguments later, Mr. Thompson, go
25 right ahead. We are standing by our affidavit.

26 MR. THOMPSON: All right. Well, can I conclude that
27 the regulatory scheme that you say these levies stem from
28 is a multi-part scheme?

1 MR. BEALE: You should conclude that it is complete,
2 complex and very detailed.

3 MR. THOMPSON: All right. So it is not a single-part
4 scheme. It is a multi-part scheme, and broad?

5 MR. BEALE: Yes.

6 MR. THOMPSON: So to the extent the Board -- if the
7 Board finds the seven-part scheme or the multi-part scheme
8 is not demonstrated on your evidence to exist, is that the
9 end of it? There is no scheme?

10 MR. BEALE: I don't know if I can make that
11 determination.

12 MS. MINOR: Just a minute. That is a legal conclusion
13 and that is something you can argue, Mr. Thompson. This is
14 not cross-examination.

15 MR. THOMPSON: Well, I thought it was fair, but let's
16 move on. Now, in terms of the formulation of this multi-
17 part scheme, who do you say formulated the multi-part plan?

18 MS. MINOR: Legislation is passed by the government of
19 Ontario. I am not sure what else you are asking.

20 MR. THOMPSON: Well, my understanding is that the
21 first part of your multi-part plan, the 1998 legislation,
22 was passed by the conservative government. Have I got that
23 straight?

24 MS. MINOR: It was passed by the government at the
25 time. It speaks for itself. It makes no difference. It
26 speaks for itself, Mr. Thompson.

27 MR. THOMPSON: All right. Well, are you suggesting in
28 your affidavit that when the regulatory scheme was created,

1 the planners, whoever they were, had in mind all of the
2 parts?

3 MS. MINOR: Mr. Thompson, we do not go into the minds
4 of legislators when we're looking at existing legislation.
5 I am sure you are aware of the test for determining purpose
6 of statutes. The purpose of statutes is determined from
7 their face. That is a legal issue, and I am not going to
8 encourage the witness to speculate on what was in anyone's
9 mind.

10 MR. THOMPSON: Well, it is your witness who says this
11 is a multi-part scheme, and so I am asking him to --

12 MS. MINOR: It is a multi-part scheme as it stands
13 today. The legislation speaks for itself.

14 MR. THOMPSON: Well, is it your evidence, then, Mr.
15 Beale, that the regulatory scheme on which you are relying
16 in this affidavit was created in 1998?

17 MR. BEALE: I'm saying, as a body of work, what we've
18 presented represents a complete and complex and detailed
19 code of regulation against which we are assigning our
20 evidence.

21 MR. THOMPSON: So is that --

22 MR. BEALE: It may have been more. I don't know.
23 These were those that came to mind.

24 MR. THOMPSON: Was the plan --

25 MR. BEALE: Whose plan?

26 MR. THOMPSON: I'm sorry?

27 MR. BEALE: Whose plan?

28 MR. THOMPSON: Well, it is your affidavit that is --

1 somebody had to plan a scheme.

2 MS. MINOR: Mr. Thompson, this is just going to go
3 nowhere if you are going to persist in this kind of
4 questioning. I'm going to keep objecting. The legislation
5 speaks for itself. The legislation was passed when it was
6 passed on its face, and that is the answer.

7 MR. THOMPSON: Well, I am not so sure it is, but let
8 me try it one more time.

9 What is the legislation that reflects the seven-part
10 regulatory scheme?

11 MS. MINOR: The legislation is referred to in the
12 affidavit. It's right in front of you.

13 MR. THOMPSON: When did the -- all right. So when did
14 the regulatory scheme come into existence, on your
15 evidence, sir?

16 MS. MINOR: The regulation -- regulatory scheme is a
17 result of the various pieces of legislation that has been
18 passed. That is a legal assessment and that is a legal
19 answer. And this witness is not here to provide legal
20 conclusions.

21 MR. THOMPSON: Okay. Well, let me then just quickly
22 make sure I've got the chronology straight in terms of the
23 parts. And to do this, I would like you to just have in
24 front of you, sir, Exhibit KT1.8.

25 What I would ask you to just confirm for me, if you
26 would look at Exhibit A - this is to Mr. Hughes' affidavit
27 - this is Hansard pertaining to the introduction of the
28 Energy Competition Act in 1998.

1 Did you have an opportunity to read that?

2 MR. BEALE: I have read it.

3 MR. THOMPSON: And to your knowledge, does that
4 represent an accurate description of what was said about
5 the Energy Competition, 1998 and its component parts when
6 it was introduced --

7 MS. MINOR: That is not Mr. Beale's job to check and
8 see whether Hansard -- whether this rendition complies or
9 comports with the tape that was made or whatever else.
10 Hansard speaks for itself.

11 MR. THOMPSON: Is there anything in that presentation,
12 sir, when you read it, that described this multi-part
13 scheme that you are referring to in your affidavit?

14 MS. MINOR: Mr. Thompson, you've got Hansard. It
15 speaks for itself.

16 MR. THOMPSON: All right. So you will agree with me,
17 then, that at tab B we have the Hansard that speaks for
18 itself on the introduction of the Energy Restructuring Act
19 in 2004?

20 MS. MINOR: And I am sure, Mr. Thompson, you know the
21 law on the extent to which a court can rely on Hansard to
22 determine purpose.

23 MR. THOMPSON: All right. It speaks for itself.

24 Now, in terms of the codes, sir, the -- I have
25 attached at D, E, F and G of Mr. Hughes' affidavits, the
26 Ontario Energy Board codes that you say form part of the
27 regulatory scheme. Did you have a chance to read those,
28 the excerpts from those?

1 MR. BEALE: They are only excerpts, yes.

2 MR. THOMPSON: Yes. And what we were attempting to do
3 is to include the "Purpose" component of each of those
4 codes.

5 Did you have a chance to look at those excerpts?

6 MS. MINOR: Can you describe to me what is relevant
7 about that question?

8 MR. THOMPSON: Well, the first relevance is -- first
9 of all, did you read them?

10 And then the second question is: Would you agree that
11 there is nothing in the "Purpose" sections of these codes
12 that refers to the multi-part scheme that you have referred
13 to in your affidavit?

14 MS. MINOR: These all speak for themselves, Mr.
15 Thompson. You can make whatever argument you want to make
16 on them.

17 MR. THOMPSON: Now, the next item in the chronology --
18 and you have discussed this with others -- this is
19 following the 1998 legislation, the codes and the -- there
20 is also the market rules there, then the Energy
21 Restructuring Act -- are the programs. And you discussed
22 this with Mr. Warren and Mr. Vegh.

23 And the HESP, as I understand it, was launched in the
24 spring of 2010, and the other one, the OSTHI, I believe,
25 came into effect in the summer -- sorry -- of 2007?

26 MR. BEALE: 2007, yes.

27 MR. THOMPSON: Yes. The other one came into effect, I
28 think, in the summer of 2007? Have I got that straight?

1 MR. BEALE: The audit portion of HESP came in April of
2 2007. The retrofit component in -- I think it was June
3 2007. And the OSTHI program was also announced in June
4 2007.

5 MR. THOMPSON: Now, in terms of the rationale for
6 those programs, perhaps you could turn to tab H, that's
7 Exhibit H of Mr. Hughes' affidavit, and then there is also
8 something about it in Mr. Warren's material. I think he
9 has the June 21 material tab in his stuff.

10 Do you recall being referred to that this morning? I
11 think it is --

12 MR. BEALE: Let me go back to it. I wouldn't want to
13 just --

14 MR. THOMPSON: I think it is tab 2 of Mr. Warren's
15 material.

16 MR. BEALE: Tab 2. Yes. Two announcements, about
17 four months apart.

18 MR. THOMPSON: Right. In terms of the April 27th
19 announcement, which I am looking at, at tab H, the header
20 says: "The objective is to fight climate change."

21 Fair?

22 MR. BEALE: That was the tag line for that
23 announcement, yes.

24 MR. THOMPSON: And the same theme appears in the June
25 20, 2007 announcement at tab 2 of Mr. Warren's material; is
26 that fair?

27 MR. BEALE: Yes. It also references saving homeowners
28 money and energy on their bills.

1 MR. THOMPSON: Right. But it doesn't reference grid
2 reliability; correct?

3 MR. BEALE: Nor would I expect it to, or any other
4 program.

5 MR. THOMPSON: Well, why would you not expect it to
6 reference grid reliability, when you say that is the
7 objective of the scheme?

8 MR. BEALE: It's an outcome of the scheme.

9 MR. THOMPSON: All right. So there is a difference
10 between an objective and an outcome; is that --

11 MR. BEALE: I would say.

12 MR. THOMPSON: -- what you're suggesting?

13 MS. MINOR: Mr. Thompson, the objectives of schemes,
14 again, is a legal question based on a reading of the
15 particular legislation in issue.

16 This is a press release. You can make whatever
17 arguments you want to make on it. It, again, speaks for
18 itself, and Mr. Beale has answered your question.

19 MR. BEALE: Press releases do tend, especially out of
20 the Premier's office, to be a fairly high-level description
21 of things, not so granular as to get into grid reliability.

22 MR. THOMPSON: Well, the reason I ask the question is
23 paragraph 5 of your affidavit, where you describe in the
24 first sentence, as I understood it, the objective of this
25 scheme, or at least one of them. And this is:

26 "Ontario has adopted conservation as the accepted
27 strategy for improving the reliability of its
28 electricity system."

1 All I am asking you, that accepted strategy doesn't
2 scheme to find its way into the announcements of the
3 programs.

4 Would you agree that it is not there?

5 MR. BEALE: No. It is not there.

6 MR. THOMPSON: The agreements with the -- I think next
7 in the sequence is the agreements with the federal
8 government that you discussed with Mr. Warren.

9 Let me just pause and say my understanding is that the
10 OSTHI initiative wasn't enlarged, in terms of money, until
11 December 2009.

12 MR. BEALE: It was around that time, yeah.

13 MR. THOMPSON: Okay. So the next documentation in the
14 sequence would be these November/December agreements.

15 And would you agree with me there is nothing in -- no
16 mention in there of either a multi-part regulatory scheme
17 or --

18 MR. BEALE: Which November/December agreements are we
19 talking about?

20 MR. THOMPSON: These are the agreements with the
21 federal government.

22 MR. BEALE: With the federal government?

23 MR. THOMPSON: Yes.

24 MR. BEALE: The memorandum of understanding?

25 MR. THOMPSON: Yes, correct.

26 MR. BEALE: Yes.

27 MS. MINOR: Mr. Thompson, we have documents. They're
28 part of the record.

1 MR. THOMPSON: That's fine. And --

2 MS. MINOR: What is the point of asking him to -- do
3 you want him to read it and see if he can pick out
4 particular language? Is that what you're asking?

5 MR. THOMPSON: No. I am asking him to confirm there
6 is nothing in them about --

7 MS. MINOR: Well, you can read them yourself, can't
8 you?

9 MR. THOMPSON: Well --

10 MS. MINOR: And you can make whatever argument you
11 want to make on it.

12 MR. THOMPSON: Well, I am just asking him to confirm
13 it is not in there. They're his documents.

14 MS. MINOR: You're going to waste our time by asking
15 him whether or not the phrase "complex scheme" is part of
16 this document, which you can read, the Board can read and
17 every other lawyer can read.

18 MR. THOMPSON: I was suggesting there is no reference
19 to the grid reliability objective or strategy that is what
20 you folks say is the essence of this scheme.

21 MR. BEALE: Well, the memorandum of understanding were
22 agreements between the federal government and the province
23 on how the program was going to be administered, not
24 intended to tell one party or the other how they should be
25 measuring its accomplishments.

26 It is simply an administrative tool.

27 MR. THOMPSON: All right.

28 You had a discussion with Mr. Warren, I believe, about

1 the budget documents, and we've got some of those attached.
2 The 2007 budget is at tab L, and the 2009 budget is at
3 tab M.

4 And here, again, would you confirm there is no
5 reference in there to --

6 MR. BEALE: Which document am I referring to, first?

7 MR. THOMPSON: This is Mr. Hughes' affidavit. There
8 is an excerpt from the Ontario budget at tab L and another
9 one at tab M.

10 As far as I can determine, there is no reference in
11 there to a multi-part regulatory scheme. Am I missing
12 something?

13 MR. BEALE: Apparently.

14 MR. THOMPSON: All right.

15 MR. BEALE: Yes. There is no mention to a multi-part,
16 complex, detailed, regulatory scheme in this budget
17 document. Of course not.

18 MR. THOMPSON: Okay. At tab C, we have the Hansard
19 excerpt pertaining to when the Green Energy Act was
20 introduced, so I won't ask you about that. It speaks for
21 itself, according to your counsel.

22 Following the introduction of the Green Energy Act,
23 there is an excerpt from Hansard pertaining to a statement
24 that the Premier made, and you will find that -- excuse me
25 one moment -- at Exhibit K, Mr. Hughes' affidavit.

26 Here again -- and I am looking at the first full page
27 under the cover sheet of Hansard where the Premier
28 speaking, says, in the second full paragraph.

1 "You can earn up to \$10,000 in savings and in
2 refunds, both from the province of Ontario and
3 the federal government, if you choose to pursue
4 an energy audit and renovate your home. I think
5 that is an important financial contribution being
6 made by Canadian taxpayers and the Ontario
7 taxpayers to incent Ontario families into
8 pursuing energy conservation policies."

9 Do you have any quarrel with that statement?

10 MR. BEALE: No, I don't have any quarrel. Do you?

11 MR. THOMPSON: No.

12 MR. BEALE: Let me remind you the statement was made
13 before the Green Energy Act had final reading in the House,
14 and some months before section 26.1 was proclaimed by the
15 House.

16 MR. THOMPSON: All right. But the Green Energy Act
17 was tabled, as I understand it, in February of 2009?

18 MR. BEALE: It had first reading in February, third
19 and final reading and proclamation in May --

20 MR. THOMPSON: Okay.

21 MR. BEALE: -- after this date.

22 MR. THOMPSON: You had some discussion with Mr. Warren
23 about ministry estimates. And at tabs P and Q, we have
24 reproduced the estimates for the -- reproduced the
25 estimates -- sorry, I take it this is tab N and O, for 2007
26 and -- 2007 and 2008 and 2008-09, and then at P and Q, it
27 is 2009-2010 and 2010-11.

28 Did I understand correctly that you agreed that all of

1 the funds that were used for these two programs were
2 included in those estimates for those years?

3 MR. BEALE: I can only agree that these were the
4 published estimates for our programs at the beginning of
5 the year. In the case of -- let me just confirm for you.
6 In the case of 2008 and 2009, we had an end-year submission
7 asking for more funds from treasury board.

8 In the case of years 2009 and 2010, we had a similar
9 treasury board submission requesting additional funds.

10 MR. THOMPSON: Okay, but -- and I accept that. But my
11 understanding is that all of the monies that were being
12 expended on these programs were included in the estimates
13 we have in Mr. Hughes' affidavit, and I take your point to
14 be -- and they would be also be included in follow-up
15 estimates.

16 MS. MINOR: Could you just clarify for me, please,
17 what you mean by estimates and actual? An estimate is an
18 estimate. What is actually being spent is something else.
19 That is why you have to often ask for more. So I am not
20 sure what your question is, Mr. Thompson.

21 MR. THOMPSON: Well, I was picking up on, I thought,
22 the witness's use of the word "estimates" in both
23 occasions, but were you talking of actuals? Have I
24 misunderstood you, sir?

25 MR. BEALE: I don't believe so, so long as we
26 understand that the printed document and estimates are not
27 an end of year summary of what actually took place.

28 This is done for the purpose of appropriating budgets

1 and allowing ministries to spend money.

2 MR. THOMPSON: Okay.

3 MR. BEALE: And because we are in a cost recovery
4 program, the only way we can cost recover is to spend the
5 money.

6 MR. THOMPSON: Yes, I think I understood that. I
7 understood you to be saying that at any point in time, you
8 could be estimating forward, but as, for example, at tab O,
9 we have some actual numbers for 2006 and 2007.

10 So the document is called estimates, but it does
11 contain some historic actuals. Have I understood that
12 correctly?

13 MR. BEALE: Okay.

14 MR. THOMPSON: Is that --

15 MR. BEALE: That's fair.

16 MR. THOMPSON: Okay. Now, when was section 26.1 of
17 the Green Energy Act that got carried forward to the OEB
18 Act enacted as far as you can recall, sir?

19 MR. BEALE: As I recall, it was proclaimed in
20 February, around the same time as the regulation, February
21 of 2009 -- February of 2010. 2010.

22 MR. THOMPSON: Okay. And that section is -- the
23 constitutionality of that is being challenged in this
24 proceeding and it -- would you agree with me that it
25 empowers the Lieutenant Governor in Council to issue
26 regulations to require the Board to assess certain persons
27 and classes of persons by regulation? That is my
28 paraphrase, but I am looking at section 26.1, subsection 1.

1 MR. BEALE: It sounds like a fair -- just to be clear,
2 I could read it in to the record just so that nobody is
3 paraphrasing.

4 MR. THOMPSON: Okay. It reads:

5 "Subject to the regulations, the Board shall
6 assess the following persons or classes of
7 persons, as prescribed by regulation, with
8 respect to the expenses incurred and expenditures
9 made by the Ministry of Energy and Infrastructure
10 in respect of its energy conservation programs or
11 renewable energy programs provided under this
12 Act, the Green Energy Act, 2009, the Ministry of
13 Energy and Infrastructure Act or any other Act:
14 "1. In respect of consumers in their service
15 areas, gas distributors and licensed
16 distributors.
17 "2. The IESO.
18 "3. Any other person prescribed by regulation."

19 MR. BEALE: Yes.

20 MR. THOMPSON: Did I read that correctly?

21 MR. BEALE: Yes. Thank you.

22 MR. THOMPSON: Thanks. So the section 26.1 is not
23 limited to electricity distributors; true?

24 MR. BEALE: Fair. True.

25 MR. THOMPSON: So --

26 MS. MINOR: Would you like to indicate -- could you
27 indicate where you are going on this, because again the
28 legislation speaks for itself? So, I mean, are you leading

1 to some question that is appropriately cross-examination?

2 MR. THOMPSON: Well, I think so, because the scheme,
3 regulatory scheme that you are putting forward here is one
4 that is limited to electricity.

5 MS. MINOR: That's correct. We agreed to that. That
6 is what the issue is before this Board.

7 MR. THOMPSON: All right. Well, my question is: Is
8 that not inconsistent with section 26.1?

9 MS. MINOR: That is not for Mr. Beale to comment on.
10 That would be a legal conclusion. You can make whatever
11 argument you'd like.

12 MR. BEALE: I would note that it is subject to the
13 regulation, and this regulation that we're talking about
14 deals with electricity.

15 MR. THOMPSON: All right. Well, let's move on.

16 Now, in terms of the Regulation 66/10, you were having
17 some discussion with Mr. Warren about that.

18 There is a companion regulation, Regulation 67/10; am
19 I correct? This is the one that says the charges shall be
20 added to the regulatory line in the bill, or words to that
21 effect?

22 MR. BEALE: I don't have that with me, but yes.

23 MR. THOMPSON: Do you recall it?

24 MR. BEALE: Yes.

25 MR. THOMPSON: Okay.

26 I may have missed this when you were discussing this
27 with Mr. Warren, but was it budget shortfalls that prompted
28 these regulations?

1 MS. MINOR: You didn't miss it. Our answer was that
2 he was not answering that question.

3 MR. THOMPSON: All right. Okay.

4 MS. MINOR: The regulations speak for themselves.

5 MR. THOMPSON: Now, just on the -- you indicated to
6 Mr. Warren that you had some role in the -- as I understand
7 it, and correct me if I am wrong -- in the formulation of
8 section 26.1, as well as Regulation 66/10.

9 Just stopping there, have I got that straight?

10 MR. BEALE: It happened within my area of
11 responsibility, yes.

12 MR. THOMPSON: Could you explain to me why the scheme
13 is to have the Board assess utilities, rather than simply
14 having the regulation assess them directly?

15 MS. MINOR: And that is not relevant to the issue
16 before the Board. Unless you can persuade me otherwise,
17 this is not a line you can pursue.

18 MR. THOMPSON: I am not having much luck with you, so
19 I won't take up your time with my explanation.

20 Now, in the materials that were in Mr. Warren's
21 initial affidavit, there is a letter from the Board, Mr.
22 Beale. This is the April 9, 2010 letter that contains the
23 assessments, and it is -- I hope you have a copy of it. It
24 was an exhibit in his stuff.

25 I have it at page 27 of the -- I think the amended
26 motion record. But it is the April 9, 2010 letter to the
27 Board. Do you have a copy of it?

28 MR. VIRANI: I don't think he does have a copy of

1 that, Mr. Thompson.

2 MR. WARREN: I think I have extra copies of the
3 material, if you just bear with me.

4 Sorry. My apologies. I don't.

5 MS. DeMARCO: I may, Mr. Warren.

6 MR. THOMPSON: Does somebody else have one, by any
7 chance?

8 MS. DeMARCO: I do.

9 [Ms. DeMarco passes document to Mr. Virani.]

10 MR. THOMPSON: Do you happen to have that in front of
11 you now, sir?

12 MR. BEALE: I don't have it in front of me yet.

13 MR. THOMPSON: Oh, I'm sorry.

14 [Mr. Virani passes document to witness.]

15 MS. MINOR: Are you going to ask him if he has ever
16 seen that letter?

17 MR. THOMPSON: Okay. Have you ever seen that letter?

18 MR. BEALE: No, I haven't seen this letter. It's a
19 letter from the Board.

20 MR. THOMPSON: This is the letter from the Board
21 acting on the Regulation 66/10, and so it is invoicing
22 individual electricity distributors in accordance with that
23 regulation.

24 You have never seen it before? You are not familiar
25 with it?

26 MR. BEALE: I am not addressed to it, so no, I have
27 not seen this.

28 MR. THOMPSON: All right. That's fine.

1 MR. BEALE: I assume they did it properly.

2 MR. THOMPSON: All right. Let's move on, then.

3 Now, the Regulation 66/10 became public approximately
4 when? I think Mr. Warren asked you that, and I thought you
5 said in March. But again, I may have missed that.

6 MR. BEALE: It was printed in the Gazette March 27th.

7 MR. THOMPSON: All right.

8 MR. BEALE: Published on e-Laws March 15th.

9 MR. THOMPSON: In Mr. Hughes' affidavit, if you go to
10 tab W, you will see an article published by the CDL
11 Institute on April 22nd, 2010, so roughly a month and a bit
12 after the regulation was published, as I understand your
13 evidence.

14 Is April 22 about a month and a bit after it was
15 published?

16 MR. BEALE: A month and five -- a little less than a
17 month, yes.

18 MR. THOMPSON: Before we provided you with his
19 affidavit, were you familiar with that article?

20 MR. BEALE: I had read it, but I didn't -- I would
21 characterize myself as being familiar with the...

22 MR. THOMPSON: All right. Well, it is an article
23 questioning the constitutionality of the section 26.1 in
24 the regulation.

25 MS. MINOR: Where are you going with these questions,
26 Mr. Thompson?

27 MR. THOMPSON: Well my question is: Did that article
28 cause you any concern?

1 MS. MINOR: That is not a proper question.

2 MR. BEALE: Personally, no.

3 MR. THOMPSON: Now, there has been some discussion of
4 this, as well, but this was with respect to the discussions
5 in the legislature on November 1st and November 2nd of this
6 year. And you will find that at tab X of the affidavit of
7 Mr. Hughes.

8 I take it you are familiar with those Hansard
9 references, sir?

10 MR. BEALE: I have copies of them, yes.

11 MR. THOMPSON: Okay. Now, others have asked you this
12 question, and my understanding of the current situation is
13 there have been no assessments pertaining to these program
14 expenditures for the period from their inception to March
15 31, 2009; is that correct?

16 MR. BEALE: There couldn't have been.

17 MR. THOMPSON: Well, why not? You can go back as far
18 as you want, according to the legislation. You can seek
19 reimbursement of monies sourced from taxes.

20 MR. BEALE: The regulation was intended to recover
21 only direct program costs for the fiscal year 2009-2010 for
22 those two programs, and no other programs and no other
23 costs. Very specific costs.

24 MR. THOMPSON: All right. So I take your point. That
25 particular regulation is confined to April 1, 2009 to March
26 31, 2010. You've discussed that with others?

27 MR. BEALE: Yes.

28 MR. THOMPSON: All right. But is there anything to

1 preclude a regulation assessing amounts paid the period
2 2007 to March 31, 2009?

3 MS. MINOR: That is a legal question, Mr. Thompson.

4 MR. THOMPSON: Okay. And the -- there's nothing been
5 assessed on gas utilities yet, and I understand you to have
6 said to the others nothing is going to be assessed on gas
7 utilities. Did I understand that correctly?

8 MR. BEALE: The transcript will have to speak for
9 itself. I am not going to paraphrase what the minister
10 said or didn't say.

11 MR. THOMPSON: The transcripts also suggest that
12 nothing further is going to be assessed on electricity
13 distributors. Would I get the same answer on that
14 question?

15 MR. BEALE: You would.

16 MR. THOMPSON: All right. Do these recent actions of
17 the government, in your view, have any bearing on whether
18 the scheme that you postulate in your affidavit exists or
19 doesn't exist?

20 MR. BEALE: The scheme remains.

21 MR. THOMPSON: I'm sorry?

22 MR. BEALE: The scheme remains.

23 MR. THOMPSON: I still didn't hear it.

24 MR. BEALE: The scheme remains. The legislation is
25 there. The regulations are there.

26 MR. THOMPSON: Okay. Well, let me ask it this way.
27 Do the actions -- the recent actions of the government
28 demonstrate the absence of a scheme of the type you

1 postulate in your evidence?

2 MS. MINOR: Mr. Thompson, the legislation speaks for
3 itself.

4 MR. THOMPSON: Let me move on to another area here
5 with respect to this multi-part scheme that you have
6 described in your affidavit.

7 Now, who do you say are the regulated persons under
8 the scheme? Are they the utilities, the electricity
9 utilities?

10 MS. MINOR: Again, the legislation speaks for itself.
11 Mr. Thompson, do you want to let us know where you're going
12 with this?

13 MR. THOMPSON: Well, I wanted to find out, first of
14 all, whether we are talking about the electricity utilities
15 as the persons being regulated, and then I was going to
16 move to this question of benefits.

17 MS. MINOR: Benefits is a fair question, so go on to
18 benefits.

19 MR. THOMPSON: All right. Now, the monies that were
20 paid under the two programs, HESP and OSTHI, you've told
21 others were funded by taxes. I believe I have that
22 straight. Is that fair?

23 MR. BEALE: A part of both programs are funded through
24 the fiscal plan, yes.

25 MS. MINOR: And the answer was that comes from
26 consolidated revenue.

27 MR. THOMPSON: Okay. So my use of the word "taxes"
28 and consolidated revenues, is there a difference?

1 MS. MINOR: There could be other money in consolidated
2 revenue that does not come from taxes, as you well know.

3 MR. THOMPSON: Now, is it fair for me to suggest that
4 the monies that are paid under the HESP program are paid as
5 grants to homeowners?

6 MR. BEALE: The amounts that make up the regulation,
7 the 53-odd-million dollars, were direct incentives paid to
8 homeowners who participated in those two programs.

9 MR. THOMPSON: And the word "grant" is used in a
10 number of places in the material.

11 MR. BEALE: Grant, rebate, as you wish.

12 MR. THOMPSON: Well, do you agree with me a grant is a
13 gift?

14 MR. BEALE: I'm not sure if I want to parse it that
15 way. It is a common term in government when you give a
16 grant.

17 MS. MINOR: I think you'd better define what you mean
18 by gift before you ask somebody to agree with that.

19 MR. THOMPSON: No recourse against the donee to get
20 the money back.

21 MS. MINOR: Do you want to explain that further? This
22 money is given as an incentive.

23 MR. THOMPSON: Well, it also says it is given as a
24 grant.

25 MS. MINOR: And he said as a grant or rebate.

26 MR. THOMPSON: Well, what do you say a grant is, Ms.
27 Minor?

28 MS. MINOR: I am not here to argue with you, Mr.

1 Thompson. I am here to try to understand what your
2 questions mean and where they're going so we know whether
3 they're relevant.

4 MR. THOMPSON: All right.

5 MS. MINOR: Are you asking whether the government is
6 going to ask for this money back? Is that the question?

7 MR. THOMPSON: No. I was asking if it is fair to
8 characterize it as a gift.

9 MS. MINOR: It is characterized as a grant, or rebate
10 or incentive.

11 MR. THOMPSON: All right. Now, the same thing with
12 the businesses that are under the OSTHI. It is a grant or
13 incentive, sir?

14 MR. BEALE: Yes, rebate.

15 MR. THOMPSON: All right. Now, the benefits -- well,
16 one other item. Is it fair to say the government doesn't
17 provide any services to utilities in connection with these
18 grants? This is not a fee-for-service type of proposition
19 you are postulating here?

20 MR. BEALE: No.

21 MR. THOMPSON: All right. And the utilities provide
22 no services to the consumers related to these grants; is
23 that fair?

24 MR. BEALE: Not to my knowledge.

25 MR. THOMPSON: All right. So that the benefit -- and
26 is it fair for me to conclude that most consumers and
27 utilities and others in Ontario are taxpayers? Is that a
28 reasonable assumption?

1 MR. BEALE: I can't -- I don't know if every member of
2 the public that participated in the HESP program is a
3 taxpayer.

4 MR. THOMPSON: All right. But to the extent that the
5 monies in the consolidated revenues have been sourced from
6 taxpayers, the benefits that flow from the grant will flow
7 on the issuance of the grant or incentive to the eligible
8 person?

9 MR. BEALE: They flow to the eligible person. Whether
10 or not -- as Ms. Minor suggests, there may be other things
11 in consolidated revenue, other than taxes. So I can't
12 attribute it quite that finely.

13 MR. THOMPSON: Well, the point I was leading up to is
14 this, that the assessment of the levies against the
15 utilities and the actual payment of the levies by the
16 utilities doesn't have associated with it any benefits that
17 are incremental to those that flow as a result of the
18 grants?

19 MR. BEALE: To the utility?

20 MR. THOMPSON: To anybody. The benefits from the --

21 MR. BEALE: The financial benefits in terms of
22 reducing energy costs and managing bills flow to the
23 participants of the program.

24 MR. THOMPSON: And the financial benefits, whatever
25 they are, associated with saving energy globally flow to
26 whoever they flow to on the occasion of the grant?

27 MR. BEALE: The outcome of saving that energy, we
28 argue, is a system benefit that improves reliability to the

1 grid. It's a system benefit in reducing avoided costs for
2 future generation, and those benefits are shared by all
3 ratepayers, not just the recipient of the incentive
4 payment.

5 To the extent that the grid in a distribution area is
6 more stable and reliable, that, we think, confers a benefit
7 to that distributor.

8 MR. THOMPSON: But that's a benefit that flows from
9 the grant, not from the assessment of a levy against the
10 utilities and the passing on of that levy by the utilities
11 to consumers.

12 There is no incremental benefits associated with those
13 two steps; would you agree?

14 MR. BEALE: I will take your -- I am not quite sure
15 what it means, frankly, but...

16 MS. MINOR: Would you like to clarify your question?

17 MR. THOMPSON: You give a company -- what is the max,
18 \$800,000? Under the OSTHI?

19 MR. BEALE: Say it is \$400,000.

20 MR. THOMPSON: Okay, 400. I thought it got increased
21 to 800, but anyway... All right. So that company benefits
22 from that \$400,000?

23 MR. BEALE: Right.

24 MR. THOMPSON: And to the extent that company reduces
25 its takes of energy, everybody benefits?

26 MR. BEALE: Yes.

27 MR. THOMPSON: All right. So that is a benefit, those
28 are benefits that flow from the grants -- the grant?

1 MR. BEALE: Directly to the participant, and
2 indirectly, to others, yes.

3 MR. THOMPSON: Right. So the assessment of the levy
4 and its subsequent passing on to the utility -- electricity
5 utility customers, does not trigger any incremental
6 benefits?

7 That is my question.

8 MS. MINOR: What do you mean by "incremental"?

9 He has already said there is a benefit to the utility,
10 a benefit to the consumer, and a benefit indirectly to
11 others.

12 MR. THOMPSON: Tied to the grant?

13 MS. MINOR: Tied to the incentive. The grant, as you
14 know, also has conditions on it.

15 MR. THOMPSON: Are there any incremental --

16 MS. MINOR: What does "incremental" mean in this
17 context?

18 MR. THOMPSON: Over and above the benefits we have
19 already been talking about, the second stream of payments
20 by the --

21 MS. MINOR: "Incremental" to my mind means piece-by-
22 piece. If you are saying additional, that is a different
23 question.

24 MR. THOMPSON: Well, additional. Have it your way.

25 MS. MINOR: Well, what are you asking?

26 MR. THOMPSON: Well, "incremental" and "additional" to
27 me means the same thing.

28 I am asking: Are there any additional benefits?

1 MR. BEALE: I don't believe so.

2 MR. THOMPSON: Thank you.

3 MR. BEALE: If you are phrasing it this way.

4 MR. THOMPSON: Now, in terms of the assessments,
5 though, and the subsequent passing of them on to -- sorry.

6 In terms of the assessments, the party that benefits
7 is the government?

8 MS. MINOR: Is that a question?

9 MR. THOMPSON: Is that correct?

10 MR. BEALE: When the assessments are paid, there is
11 cost recovery for ministry programs, yes.

12 MR. THOMPSON: There is cost recovery for monies
13 previously expended in this particular regulation?

14 MR. BEALE: Yes.

15 MR. THOMPSON: Correct? All right.

16 And so the part of 26 that you are operating under
17 here is -- I am looking at 26.2, subsection (2), where
18 special purposes are described. And item 6 is:

19 "To reimburse the province for expenditures it
20 incurs for any of the above purposes."

21 That is the part of that section, I suggest, that is
22 applicable to this particular regulation.

23 Have I got that straight?

24 MS. MINOR: Again, I have no idea what your question
25 really is, Mr. Thompson, but obviously the regulation
26 speaks for itself.

27 This regulation permits reimbursement for expenditure
28 on a particular program.

1 MR. THOMPSON: Well, I am talking about a
2 reimbursement situation versus a levy to fund something.
3 All of the other sections, 1 to 5, talk about funding
4 something, whereas item 6 talks about reimbursing the
5 province.

6 And I just wanted to get confirmation that is the
7 specific fact situation we're dealing with here.

8 Do you agree, sir?

9 MS. MINOR: I honestly do not understand your
10 question.

11 MR. THOMPSON: Do you understand me, sir?

12 MR. BEALE: Well, let me try. I don't know.

13 We use the words "funding" and "pay" for these
14 incentives in the sense of we will only cost-recover those
15 amounts that we can demonstrate we have spent and received
16 a benefit from.

17 So the appropriation that the ministry gets is the
18 funding envelope within which we work. We are funded to
19 run these programs. If we weren't funded to run the
20 programs, then we would not be able to pay the incentives
21 as applications were processed.

22 The intention is to recover only those direct program
23 costs that we can identify to a specific either --
24 electricity rate.

25 So we are recovering -- we use the term "recovering".
26 The legislation uses the word "reimburse", but the
27 intention is to recover.

28 MR. THOMPSON: All right. Well, let me move on to --

1 getting towards the end here.

2 You have discussed this with others to some degree.

3 It is the sort of blended nature of the monies that are
4 being used in these two programs.

5 You have told others that part of the money relates to
6 electricity and part relates to other activities. That is
7 what I understood you to say.

8 Have I got that straight?

9 MR. BEALE: Yes.

10 MR. THOMPSON: All right. Now, in terms of the
11 applicants, though, for the funding, was there any
12 demonstration made to them when they accepted these
13 payments or applied for them that they were dealing with
14 some sort of hybrid type of grant?

15 MS. MINOR: Mr. Thompson, I am not sure what you are
16 asking.

17 The applicants can read the information in the
18 statute. They can read the regulation. They can read
19 whatever information is provided, you know, by way of
20 websites or anything else.

21 What -- what is your question?

22 MR. THOMPSON: Well, the applicants applied for a
23 grant or incentive. If it is the HESP, they apply in their
24 capacity as homeowners. Did I understand that correctly,
25 sir?

26 And they're considered and they are determined to be
27 eligible and they receive a one-time payment as a
28 homeowner; fair?

1 MR. BEALE: Yes.

2 MR. THOMPSON: Okay. From what I read in the material
3 that you provided, there is no way the applicant knows that
4 part of that relates, as you say, to electricity, part
5 relates to the natural gas, part relates to something else.

6 This is all something you do internally?

7 MR. BEALE: We do it for the purposes of this
8 regulation. Most homeowners don't really care whether they
9 are being offered a program that deals with natural gas or
10 propane or heating fuel or wood or electricity.

11 They typically are asking us for advice on what they
12 can do to save energy.

13 We don't go in and say: Oh, well, maybe you should do
14 this if you only want to save electricity, but if you only
15 want to save propane, then you should be doing this.

16 It is a program designed to provide multi-fuel
17 recommendations to homeowners.

18 We do it for the purpose of this regulation, and we
19 spent quite a bit of time making sure that we could do it
20 accurately.

21 MR. THOMPSON: Well, it is an allocation, as I
22 understand your evidence. You take some data from NRCan,
23 and some goes to electricity, some goes to gas, some goes
24 elsewhere.

25 MR. BEALE: It is an allocation, an apportionment.

26 MR. THOMPSON: But as far as the recipients of the
27 payments are concerned, they have no idea what that
28 allocation is; is that fair?

1 MR. BEALE: Now, that would be fair. I think it is
2 also fair to say that they wouldn't care.

3 MR. THOMPSON: Right. But my point is if this is a
4 clearly-defined regulatory scheme of which -- of the type
5 you have described in your affidavit and the cases talk
6 about, it seems to me that it should be described upfront
7 how much is going to get steered towards electricity and
8 how much is still staying within the confines of
9 consolidated revenue.

10 MS. MINOR: Well, it may seem that to you. You can
11 make that argument, Mr. Thompson.

12 MR. BEALE: Most of our homeowners know the difference
13 between changing their gas furnace and changing their air
14 conditioner and have a fairly good understanding of what
15 form of energy they are likely to be saving as a result.

16 MR. THOMPSON: Well, can I put the question this way?
17 Is it fair for me to suggest that the whole of the payment
18 that you are making to these homeowners and to these
19 businesses cannot be justified as a regulatory charge?

20 MS. MINOR: That is a legal conclusion, Mr. Thompson.
21 You can make whatever argument you wish at the appropriate
22 time.

23 MR. THOMPSON: Is there any evidence to show this
24 allocation approach to these payments was contemplated by
25 any planner?

26 MS. MINOR: Same answer, Mr. Thompson.

27 MR. THOMPSON: All right. Okay, thank you very much,
28 sir.

1 MR. BEALE: Thank you.

2 MR. MILLAR: Maybe we will try to squeeze in one more
3 before the break. Ms. DeMarco, would you like to go next?

4 MS. DeMARCO: Thank you, Mr. Millar.

5 **CROSS-EXAMINATION BY MS. DEMARCO:**

6 MS. DeMARCO: Hello, Mr. Beale. I have just a few
7 questions on, first, the nature and cost of the HESP and
8 OSTHI programs, and, second, the benefits that you allege
9 will arise from the programs.

10 Before I get into those, I just want to make sure that
11 I'm clear in relation to your role pertaining to the HESP
12 and the OSTHI.

13 Specifically, I am referring to paragraphs 1 through 5
14 of your affidavit.

15 MR. BEALE: I am the director responsible for the HESP
16 and OSTHI programs.

17 MS. DeMARCO: So just so I am clear, your role
18 included oversight of the development of the HESP and OSTHI
19 programs?

20 MR. BEALE: Yes.

21 MS. DeMARCO: And implementation of the HESP and OSTHI
22 programs?

23 MR. BEALE: Yes.

24 MS. DeMARCO: And continues to include oversight of
25 the administration of the HESP and OSTHI programs?

26 MR. BEALE: Yes.

27 MS. DeMARCO: So you have general knowledge, and the
28 reason, in fact, you are sitting in front of us today is

1 that you know what they're about and who has taken part in
2 them; is that fair?

3 MR. BEALE: I hope so.

4 MS. DeMARCO: I hope so, or is that a "yes"?

5 MR. BEALE: Yes.

6 MS. DeMARCO: Great. Thank you.

7 So fair to say that the HESP applies only to
8 homeowners; is that correct?

9 MR. BEALE: Yes.

10 MS. DeMARCO: So no industrial customers would have
11 taken part in that program?

12 MR. BEALE: Nor commercial.

13 MS. DeMARCO: So no gas-fired electricity generators
14 would have taken part in that program?

15 MR. BEALE: None.

16 MS. DeMARCO: And, similarly, safe to say that the
17 OSTHI is quite limited in its scope?

18 MR. BEALE: Well, I would say eligibility criteria for
19 OSTHI includes commercial and industrial and institutional
20 clients. It is also true that we haven't had, to my
21 knowledge, any industrial clients that have taken advantage
22 of it. They tend mostly to be small commercial, or farming
23 operations, or apartment buildings or recreation centres.

24 MS. DeMARCO: So no industrials have taken part?

25 MR. BEALE: Not to my knowledge.

26 MS. DeMARCO: Similarly, no electricity generators
27 falling in the class of industrials have taken part?

28 MR. BEALE: No.

1 MS. DeMARCO: None of them have signed contribution
2 agreements?

3 MR. BEALE: No, not to my knowledge.

4 MS. DeMARCO: Great. In terms of the costs of the
5 program, I am now referring to part 2 of your affidavit
6 starting at page 5, specifically paragraph 21. You outline
7 generally there the nature of the contribution agreement,
8 and getting into paragraph 53 of your affidavit, you
9 indicate that approximately 53 million of the costs of the
10 programs, plural, HESP and OSTHI, have been recovered or
11 will be recovered through the Regulation 66/10?

12 MR. BEALE: That amount is the amount stipulated in
13 the regulation, yes.

14 MS. DeMARCO: But as I understand it, that
15 \$53 million, just clarify for me, is only a minor portion
16 of the costs of the program?

17 MR. BEALE: Of both HESP and OSTHI for the year, it
18 would be less than a third.

19 MS. DeMARCO: So a minor portion, not a major portion?

20 MR. BEALE: It is less than a third.

21 MS. DeMARCO: Less than the majority and less than a
22 third.

23 I am now going to ask you to refer to what is called
24 the appendix of your affidavit. I believe it might have
25 been in error. It should be called appendix D.

26 Maybe your counsel can clarify whether or not that is
27 accurate. It is the appendix at the end which includes a
28 series of tables about the estimated costs of the program.

1 MR. BEALE: Yes.

2 MS. DeMARCO: I do believe it should have been marked
3 as appendix D. Do you have that up, sir?

4 MR. BEALE: Yes, I do.

5 MS. MINOR: We failed to mark it. Is that the one?

6 MS. DeMARCO: I believe it should be duly noted as
7 appendix D.

8 MS. MINOR: Yes.

9 MR. BEALE: Four tables?

10 MS. DeMARCO: That's right. In looking at table 1 and
11 table 2, it appears as though certain costs of the HESP and
12 OSTHI programs are allocated to electricity, and other
13 costs are allocated to other fuels. That's correct?

14 MR. BEALE: That's correct.

15 MS. DeMARCO: And those other fuels would include
16 natural gas. That's correct?

17 MR. BEALE: Natural gas and propane and heating oil
18 and wood.

19 MS. DeMARCO: Okay. And as I read tables 1 through 4,
20 it appears as though the total cost of the HESP and OSTHI
21 programs are in the range of \$184 million; is that right?

22 MR. BEALE: That was our estimated cost, yes.

23 MS. DeMARCO: And your actual costs are in around the
24 range of \$181 million; do I have that right?

25 MR. BEALE: At the end of the fiscal year, yes.

26 MS. DeMARCO: That is table 4 that we find that.

27 MR. BEALE: Yes.

28 MS. DeMARCO: So we've got approximately 130-plus-

1 million dollars which notionally still could be recovered?

2 MR. BEALE: Not from this regulation.

3 MS. DeMARCO: Not from this regulation, but under
4 section 26.1?

5 MR. BEALE: If another regulation was put in to
6 recover those costs. No, I don't even think they can do it
7 now. It has to be -- these -- the regulation was for costs
8 incurred in the previous fiscal year, not this fiscal year.

9 MS. MINOR: Those are legal questions. I am not sure
10 where you are going with this.

11 MS. DeMARCO: Well, just really in relation to -- that
12 \$130 million number, that is in your affidavit. So at no
13 point in time would those costs be recovered? They have
14 already been paid for?

15 MR. BEALE: They have already been paid for. The
16 books are closed.

17 MS. DeMARCO: The books are closed, so they could
18 never be recovered?

19 MR. BEALE: I don't --

20 MS. MINOR: I think that is a legal question, again.
21 I think you've got his answer.

22 MR. BEALE: The intention -- I can offer the intention
23 for that, the regulation that we're speaking to, is to
24 recover costs for that fiscal year, period. I don't know -
25 - I don't know, and counsel may be able to give me a better
26 idea of the extent to which we can go backwards or forwards
27 in time with this thing, but I don't think there is any
28 expectation of anything like that.

1 MS. DeMARCO: So let me ask you, as someone who is in
2 charge of the program, is there any intent to recover that
3 \$130 million?

4 MS. MINOR: The person or the body ultimately in
5 charge of this is cabinet. So Mr. Beale is not capable of
6 binding cabinet. That is not his role. He can say right
7 now the regulation speaks for itself and he hasn't been
8 directed to recover money previously. I think that is the
9 answer.

10 MS. DeMARCO: So, again, I am not asking about a
11 regulatory conclusion or legislation here. I am asking
12 about you as the director. In terms of the intent of
13 dealing with that \$130 million, I understand your answer to
14 be the books are closed; there is no intent?

15 MR. BEALE: I know of no intention.

16 MS. DeMARCO: Thank you.

17 So fair to say, then, it is possible that going
18 forward for fiscal -- the first portion of fiscal 2011,
19 fiscal 2011.

20 MR. BEALE: This fiscal?

21 MS. DeMARCO: This fiscal, '10/11, it would be
22 notionally possible to, again, recoup some of the funds
23 from both electricity and from gas customers?

24 MR. BEALE: A policy determination of the government.

25 MS. DeMARCO: It's possible?

26 MR. BEALE: It's a policy determination.

27 MS. DeMARCO: Yes, but it is in fact possible?

28 MS. MINOR: Well, policy determinations are policy

1 determinations. Are you asking whether it is legally
2 possible?

3 MS. DeMARCO: I am asking whether, under the scheme of
4 the programs --

5 MS. MINOR: Well, is that a legal conclusion?

6 MS. DeMARCO: It's not. It is certainly within the
7 scope of Mr. --

8 MS. MINOR: How is it not a legal conclusion?

9 MS. DeMARCO: Well, certainly he has testified to the
10 fact that we have a scope of regulatory charges that have
11 been recovered for '09-'10, under the regulation. There
12 has been a specific regulation.

13 MR. BEALE: Mm-hmm.

14 MS. MINOR: Yes.

15 MS. DeMARCO: And as the administrator of that
16 program, it is possible to have similar recovery, going --

17 MS. MINOR: Only if government passes a regulation.

18 MS. DeMARCO: Right. Possible if government passes a
19 regulation; is that fair?

20 MS. MINOR: Legally. Are you asking is it possible
21 legally for them to pass a regulation? It speaks for
22 itself. I'm not sure where you're going with this.

23 MS. DeMARCO: I am asking the witness specifically if
24 it is possible under the --

25 MS. MINOR: Under his understanding of the law? As an
26 administrator, he can only do what the law permits him to
27 do.

28 MS. DeMARCO: Under his administration of the program.

1 MS. MINOR: What does that mean? Of the current
2 program?

3 MS. DeMARCO: Of the HESP and OSTHI program.

4 MS. MINOR: Of the current program, the current
5 regulation, what can he do with respect to other recovery?

6 MS. DeMARCO: Okay. What I am going to do is
7 distinguish the regulation from the programs.

8 I understand that you are an expert in the programs.
9 You administer the programs and you develop the programs;
10 is that fair?

11 MR. BEALE: Mm-hmm. Fair.

12 MS. DeMARCO: So going forward -- going backward,
13 there was an attempt to recover the cost. There was, in
14 fact, recovery of the cost of the programs under
15 regulations, certain portions of the cost of the
16 regulations; fair?

17 MR. BEALE: Yes.

18 MS. DeMARCO: And as the administrator of the
19 programs, it is possible to recover costs going forward?

20 MR. BEALE: Right now -- Janet will tell me to shut up
21 if she wants to tell me to shut up.

22 MS. DeMARCO: I am sure she will.

23 MR. BEALE: The legislation has not changed in any
24 respect regarding that authority. So you can take your own
25 opinion on that.

26 MS. DeMARCO: We will leave it at that.

27 MR. BEALE: In reference to what the Minister has said
28 in the legislature.

1 MS. DeMARCO: And in terms of the intent, is there any
2 intent to recover any costs of these programs from gas
3 distributors?

4 MS. MINOR: The intent is only that which is expressed
5 in Hansard. We don't -- we can't go beyond that.

6 MS. DeMARCO: So I wonder if you can read into the
7 record what was expressed in Hansard.

8 MS. MINOR: It is already in the record, isn't it?

9 MS. DeMARCO: I don't believe the specific wording is
10 in the record.

11 MS. MINOR: It doesn't have to be in the record, in
12 any event, because it can be filed separately.

13 Why don't you read the part in that you want read in?

14 MS. DeMARCO: Sorry, you are actually referring to the
15 Hansard? I don't have it in front of me. So from your
16 specific perspective, that was your response. I wonder if
17 you'd do the --

18 MR. VIRANI: Tab X.

19 [Mr. Beale gives document to Ms. DeMarco.]

20 MS. DeMARCO: So I am referring specifically to the
21 Minister's statement in Hansard on November 1st, where he
22 indicates in several instances that he does not intend to
23 increase any taxes or charges on natural gas, and
24 specifically indicates:

25 "What I will say is this, and this is the fact:
26 The Leader of the Opposition would try to claim
27 that he's proposing something that would save
28 everybody money. Clearly, we've looked into it.

1 It will not. What he's proposing would create
2 confusion and uncertainty among consumers. What
3 he's proposing would kill the benefits of time-
4 of-use pricing while increasing its costs through
5 billing system changes..."

6 He goes on to speak very specifically about natural
7 gas, new charges on natural gas in the province. And he
8 says:

9 "I said earlier that all of our initiatives will
10 be made very, very clear in the long-term energy
11 plan. I'm not going to speculate on that idle
12 speculation taking place over there."

13 MR. VIRANI: Can you just let us know what pages you
14 are reading from, please? Which pages?

15 MS. DeMARCO: Sorry, on page 3116, and I am on the
16 one, two, third-last paragraph under the statements of Mr.
17 Duguid, the Honourable Mr. Duguid, where he indicates:

18 "I said earlier that all of our initiatives will
19 be made very, very clear in the long-term energy
20 plan. I'm not going to speculate on that idle
21 speculation taking place over there. I can tell
22 you that we have no plans to move forward in that
23 direction..."

24 MS. MINOR: And that speaks for itself, and that is
25 where we are.

26 So asking Mr. Beale anything beyond that is only
27 speculative.

28 MS. DeMARCO: I want to ensure that that is consistent

1 with his understanding, on the record.

2 MS. MINOR: I think most directors do not -- do not
3 say that the Minister's direction is inconsistent.

4 MS. DeMARCO: That's consistent with your
5 understanding?

6 MR. BEALE: Yes.

7 MS. DeMARCO: Thank you.

8 In relation to very specifically the remainder of my
9 questions, which relate to your evidence, in part 3,
10 starting at page 6, associated with the alleged benefits of
11 the programs, can I ask you first about the heading of that
12 section?

13 And it states very specifically:

14 "Regulated entities cause the need for or derive
15 a benefit from the regulation."

16 Throughout the course of the paragraphs that follow
17 that heading, specifically paragraphs 24 through 35, you
18 are referring to the programs, the OSTHI and the HESP
19 program, not the regulation?

20 MR. BEALE: Yes.

21 MS. DeMARCO: Fair to say, then, the benefits that
22 you're talking about derive from -- the alleged benefits
23 derive from the OSTHI and the HESP program?

24 MR. BEALE: Yes.

25 MS. DeMARCO: Not the regulation?

26 MR. BEALE: Right.

27 MS. DeMARCO: Thank you.

28 MS. MINOR: You couldn't have the regulation without

1 the legislative authority. I am sure you are aware of
2 that.

3 MS. DeMARCO: Well, I thought we weren't getting into
4 legal arguments here, Ms. Minor.

5 MS. MINOR: I didn't understand your question, then.

6 MS. DeMARCO: Your witness did appear to understand
7 the question.

8 MS. MINOR: Well, let's just clarify that.

9 MS. DeMARCO: I believe he answered appropriately.

10 MS. MINOR: What did he answer?

11 MS. DeMARCO: "Yes."

12 MS. MINOR: That the direct benefit -- or that the
13 program that he is referring to in terms of causing need
14 for or deriving a benefit relates to HESP or OSTHI?

15 But you can't say that is unrelated to the
16 legislation, because you can't have a regulation without
17 empowering legislation.

18 So I am not really sure what the question was, but I
19 am sure you will explain that to us later.

20 MS. DeMARCO: I believe it was well answered in the
21 context of paragraphs 24 through 35. He is speaking of the
22 HESP and OSTHI programs.

23 Certainly in relation to your evidence at paragraph
24 25, you indicate specifically:

25 "Reducing electricity consumption through
26 programs like HESP and OSTHI reduces stress on
27 the electricity system."

28 I understand, there, you to mean that decreasing

1 electricity consumption in general may decrease stress on
2 the system.

3 MR. BEALE: Yes.

4 MS. DeMARCO: You're not saying specifically. In
5 fact, there is no empirical evidence adduced to indicate
6 the HESP or OSTHI directly decrease the stress on the
7 electricity system; is that correct?

8 MR. BEALE: Well, the obvious point is that HESP and
9 OSTHI do reduce electricity.

10 The extent to which they're reducing stress at any
11 given time or in any given distribution territory is a
12 little more uncertain.

13 But I think we are of the opinion that electricity
14 conservation, generally, big or small, adds to the benefit
15 of a stable system and adds flexibility to the operator of
16 that system.

17 MS. DeMARCO: So fair to say that electricity
18 conservation reduces stress; no clear conclusion on whether
19 HESP and OSTHI reduced stress?

20 MR. BEALE: I think conservation --

21 MS. MINOR: That was not his answer.

22 MR. BEALE: -- the conservation results -- the
23 electricity conservation savings from HESP and OSTHI are of
24 the same character as the electricity conservation results
25 of anybody else in the field.

26 The electron is the same electron.

27 MS. DeMARCO: So can you point me to any direct
28 evidence supporting the proposition that HESP and OSTHI

1 directly decrease stress and increase reliability to the
2 system?

3 MR. BEALE: I can -- we will point you to the evidence
4 that HESP and OSTHI have electricity savings attached to
5 them.

6 MS. DeMARCO: But that wasn't my question.

7 Can you point me to any evidence that you have adduced
8 that HESP or OSTHI directly decrease stress on the system
9 and increase reliability?

10 MS. MINOR: I think he has given his answer, counsel.

11 MS. DeMARCO: I don't have it, actually. And for my
12 point of clarification, maybe I just missed it.

13 MS. MINOR: I am sure you did. What he said was this
14 reduces need for electricity. That has a benefit to the
15 grid. And you said: Is there any evidence? And he keeps
16 saying it reduces the need for electricity. I am not sure
17 what other kind of evidence you are looking for.

18 MS. DeMARCO: Let me clarify very specifically,
19 because I am not talking about electricity conservation
20 writ large. I am talking about HESP and OSTHI.

21 So have HESP and OSTHI -- is there any evidence that
22 indicates that they directly have reduced stress on the
23 system, and, therefore, increased reliability of the
24 system?

25 MS. MINOR: And his answer was that the reduction of
26 demand on the system in itself contributes to stability of
27 the grid. And there is a reduction of demand when there is
28 less demand for electricity, and that is what HESP and

1 OSTHI do.

2 So when you keep saying is there any evidence of
3 direct effect, I am not sure what you are asking for? He
4 has given you the logical explanation of how it affects the
5 grid. So what is it that you are asking for? Some tracing
6 effect?

7 MS. DeMARCO: Maybe it will work better if we use
8 numbers.

9 Can I ask you to turn to appendix B of your affidavit,
10 specifically at page 1 of 3?

11 You've got that turned up, sir?

12 MR. BEALE: I am still looking for it. Sorry, which
13 exhibit are you looking for?

14 MS. DeMARCO: I am in appendix B of your affidavit,
15 page 1 of 3.

16 MR. BEALE: I've got that. Yes, okay.

17 MS. DeMARCO: And the last bullet of that sheet
18 indicates that 1,700 megawatts of conservation have been
19 achieved since 2003?

20 MR. BEALE: Yes.

21 MS. DeMARCO: That's correct? And that is on a total
22 demand of approximately 27,000 megawatts in the province?

23 MR. BEALE: Sounds about right.

24 MS. DeMARCO: And since 2003 -- let me ask you about
25 that number. The programs again didn't start until 2007?

26 MR. BEALE: These are Ontario Power Authority
27 programs, 1,700 megawatts.

28 MS. DeMARCO: So the home energy audits and the home

1 energy savings program, isn't that HESP?

2 MR. BEALE: Yes.

3 MS. DeMARCO: Okay.

4 MR. BEALE: These are different programs. These are
5 programs run by the Ontario Power Authority that you are
6 referring to.

7 MS. DeMARCO: Okay. So if you could refer to the
8 bullet just above where it says:

9 "Ontario homeowners have completed over 380,000
10 home energy audits through the Ontario Home
11 Energy Savings Program."

12 MR. BEALE: Right.

13 MS. DeMARCO: Are we not talking about HESP here?

14 MR. BEALE: That is a statement of fact in terms of
15 how many audits have been done. The next statement is a
16 statement about how many megawatts have been saved in
17 conservation in the province, in total.

18 MS. DeMARCO: In total. So would that include HESP
19 and OSTHI?

20 MR. BEALE: I doubt it.

21 MS. DeMARCO: You doubt it? So how many megawatts --

22 MR. BEALE: At the time these numbers would have been
23 generated, the results from HESP or OSTHI wouldn't have
24 been available.

25 MS. DeMARCO: Sorry, August 19th, 2010, any results
26 from --

27 MR. BEALE: These numbers are OPA results to the end
28 of 2008.

1 MS. DeMARCO: I'm just looking at the date of the
2 document.

3 MR. BEALE: I'm telling you when they were produced.

4 MS. DeMARCO: So these numbers are from 2008?

5 MR. BEALE: That's 1,700 figure is, yes.

6 MS. DeMARCO: So what number would have been produced
7 from HESP and OSTHI?

8 MR. BEALE: I don't have that.

9 MS. DeMARCO: So you are the director of the program.
10 How much conservation has resulted from these two programs?

11 MR. BEALE: Well, let's see. For HESP, on average,
12 we're getting a 25 to 35 percent reduction in energy costs.

13 For participating homeowners, we have done some
14 analysis on what a homeowner on electricity measures might
15 save. I don't have that information.

16 MS. DeMARCO: How many megawatts?

17 MR. BEALE: I don't have that information.

18 MS. DeMARCO: Will you undertake to get us that
19 information, the number of megawatts saved from the HESP
20 and OSTHI programs?

21 MR. BEALE: CANDU megawatts, yes.

22 MS. DeMARCO: I wonder if that could be marked as an
23 undertaking.

24 MR. MILLAR: JT1.8.

25 **UNDERTAKING NO. JT1.8: TO PROVIDE THE NUMBER OF**
26 **MEGAWATTS SAVED FROM THE HESP PROGRAM.**

27 MS. DeMARCO: And in relation to OSTHI, can you give
28 us the similar data, the number of megawatts saved as a

1 result of OSTHI?

2 MR. BEALE: We can undertake to try to do that, yes.

3 It would be very small. It is only 100 projects -- 16
4 projects.

5 MS. DeMARCO: So in around what range of megawatts?

6 So I wonder if we might mark that as another -- --

7 MR. BEALE: These are very small projects.

8 MS. DeMARCO: Very small? So I wonder if you can mark
9 that as the next undertaking, the number of megawatt
10 savings resulting from OSTHI?

11 MR. MILLAR: JT1.9.

12 **UNDERTAKING NO. JT1.9: TO PROVIDE THE NUMBER OF**
13 **MEGAWATTS SAVED FROM THE OSTHI PROGRAM.**

14 MS. MINOR: I think his answers are best efforts,
15 given he said we could try.

16 MS. DeMARCO: And in terms of the total megawatts
17 saved from each of these programs, what is the total amount
18 of peak megawatts saved of those total conservation
19 savings?

20 MR. BEALE: I don't know.

21 MS. DeMARCO: Could you undertake to provide that, as
22 well?

23 MR. BEALE: I have undertaken, within the constraints
24 that we have, to do that calculation. I have undertaken
25 that before.

26 MS. DeMARCO: Let me just clarify the undertaking,
27 that broken down between HESP and OSTHI -- OSTHI, the
28 number of peak megawatts saved from HESP, and the number of

1 peak megawatts saved from OSTHI.

2 MR. BEALE: Oh, I understand the question, and you
3 will get as good an answer as we can give.

4 MS. DeMARCO: My understanding was the last
5 undertaking was a total figure, so the break down is what I
6 think is the relevant distinction for the record.

7 MS. MINOR: You've got his answer.

8 MS. DeMARCO: I understand. Just for clarification of
9 the record.

10 MR. MILLAR: We won't mark that separately, Ms.
11 DeMarco. I guess it will be - to the extent they have the
12 data, it will be wrapped up in the previous two
13 undertakings.

14 MS. DeMARCO: Wonderful. So in the context of
15 conclusions regarding the programs' decrease in demand,
16 safe to say we can't make any conclusions until we actually
17 know those numbers? Fair to say?

18 MS. MINOR: What's the question?

19 MS. DeMARCO: Can we make any quantified conclusions
20 in relation to the impact of HESP and OSTHI without
21 quantified numbers resulting --

22 MS. MINOR: If you are saying can you say anything
23 that is quantified without quantification, the answer is
24 obvious.

25 If you are saying can you infer certain things without
26 quantification, that is another question. I am not sure
27 what you are asking.

28 MS. DeMARCO: So let me rephrase.

1 In terms of decreased demand, we can't say precisely
2 whether demand has been decreased as a result of these
3 programs?

4 MR. BEALE: You can't say precisely how much. I think
5 you can precisely say demand has decreased.

6 MS. DeMARCO: So we can't say how much. In terms of
7 reliability, you can't say specifically whether or not
8 reliability has been indicated -- been increased as a
9 result of these programs.

10 MR. BEALE: If in principle, energy efficiency and
11 conservation, as it seems to be accepted elsewhere, is a
12 strategy for improving reliability, and I think you can say
13 with some confidence there is a demand reduction. Whether
14 it can be quantified or not, incrementally there is
15 improvement in reliability.

16 MS. DeMARCO: So I take your answer to be, in
17 principle, as you have indicated; fair?

18 MR. BEALE: In principle.

19 MS. DeMARCO: Thank you.

20 MR. BEALE: Yes.

21 MS. DeMARCO: In the context of the commodity price of
22 electricity, you indicate in your evidence that there would
23 be a resulting decrease in the commodity price of
24 electricity. Again, fair to say that you cannot say
25 conclusively there will be a decrease in the commodity
26 price of electricity?

27 MR. BEALE: I cannot quantify the decrease, no.

28 MS. DeMARCO: Can you say definitively there will be a

1 decrease in the commodity price of electricity as a result
2 of the HESP and OSTHI programs?

3 MR. BEALE: I haven't done the numbers, no, but I
4 would say they should be.

5 MS. DeMARCO: Can you say conclusively that there will
6 be?

7 MR. BEALE: I haven't got the numbers and you don't
8 have the numbers. So, no, I can't.

9 MS. DeMARCO: Do you want to undertake to provide
10 numbers?

11 MS. MINOR: You have his answer.

12 MS. DeMARCO: I'm sorry, I didn't have the answer on
13 the undertaking. Would he like to provide an undertaking
14 to quantify the decrease in commodity price as a result of
15 the programs?

16 MS. MINOR: What kind of economic analysis are you
17 looking for? I don't think we can produce something like
18 that in the kind of either time period we have or given --
19 I am not even sure, given the information we have. I would
20 have to consult him on that.

21 MS. DeMARCO: Well, let me refer you specifically to
22 paragraph 46 of your evidence. Second sentence, it says:

23 "Lower overall peak consumption will result in
24 lower commodity prices."

25 Do I understand that to be a theoretical or general
26 statement, or very specific to HESP and OSTHI?

27 MR. BEALE: I think the statement stands.

28 What you have asked for is that definition of peak

1 consumption. Lacking that, I cannot tell you
2 quantitatively the overall reduction in commodity price --

3 MS. DeMARCO: So --

4 MR. BEALE: -- at any given time.

5 MS. DeMARCO: So we can't make a conclusive link
6 between HESP and OSTHI and the commodity price of
7 electricity?

8 MS. MINOR: What do you mean by "conclusive link"?

9 He has just given you his answer.

10 MR. BEALE: There is a link between having a lower
11 overall peak consumption lowering commodity price. There
12 is a link between those two things.

13 If we're trying now to quantify that, I cannot do that
14 right now.

15 MS. DeMARCO: So your statement refers only to peak
16 consumption will result in lower commodity prices, not HESP
17 and OSTHI?

18 MS. MINOR: He has already given you his answer with
19 respect to the relationship between HESP, OSTHI and peak
20 consumption.

21 So I don't -- I think you are just going around in
22 circles, with respect.

23 MS. DeMARCO: Well, I just really want to understand
24 here the pricing impact.

25 So just for my clarification -- maybe I am missing
26 it -- electricity pricing, of course, would be a function
27 of supply in part? Yes?

28 MR. BEALE: Yes.

1 MS. DeMARCO: And demand in part?

2 MR. BEALE: That's right.

3 MS. DeMARCO: And the relationship between supply and
4 demand?

5 MR. BEALE: So as the IESO builds up their supply bids
6 from lowest price to the highest bid, if OSTHI, HESP or
7 another OPA program reduces the peak, that next
8 incremental, marginal, higher cost piece of generation will
9 not be there. So that reduces costs.

10 MS. DeMARCO: So it will -- the cost will depend, in
11 part, on available supply at the time, as well?

12 MR. BEALE: Whatever happens to be bid in, yes.

13 MS. DeMARCO: Yes. So we can't say conclusively that
14 HESP and OSTHI will always result in decreased electricity
15 prices; is that correct?

16 MR. BEALE: I don't think you could say that about any
17 conservation program.

18 MS. DeMARCO: Thank you.

19 Let me now turn to the benefits associated with the
20 environment that you speak of.

21 You have indicated that HESP and OSTHI are part of the
22 government's climate change plan, part of the broader
23 scheme to reduce greenhouse gasses; is that correct?

24 MR. BEALE: They will have an impact, yes.

25 MS. DeMARCO: And specifically, I am referring to
26 paragraphs 36 to 41 of your affidavit.

27 MR. BEALE: Mm-hmm.

28 MS. DeMARCO: And you have also indicated that there

1 may be environmental or climate change benefits that arise
2 from those programs.

3 MR. BEALE: Yes.

4 MS. DeMARCO: And given that Ontario's supply is
5 composed primarily of nuclear and hydro, can you tell me
6 exactly what the anticipated quantified greenhouse gas
7 emissions are associated with each of those programs?

8 MR. BEALE: I can. I don't have them here, but we
9 have calculated those.

10 MS. DeMARCO: Would you undertake to provide those?

11 MR. BEALE: Yes.

12 MS. DeMARCO: And those are my questions.

13 MR. MILLAR: That's Undertaking JT1.10, I believe.

14 **UNDERTAKING NO. JT1.10: TO PROVIDE CALCULATIONS OF**
15 **ANTICIPATED QUANTIFIED GREENHOUSE GAS EMISSIONS**
16 **REDUCTION ASSOCIATED WITH HESP AND OSHTI.**

17 MR. MILLAR: And thank you, Ms. DeMarco.

18 Let's do a time check. I think we will end up having
19 to take a break.

20 Mr. Mondrow, were you still looking somewhere between
21 five and 15 minutes, I understand?

22 MR. MONDROW: Generally.

23 MR. MILLAR: Okay. Mr. Cass, do you know if you will
24 have any cross-examination?

25 MR. CASS: I am not expecting to, Mr. Millar. Thank
26 you.

27 MR. MILLAR: And Ms. Minor, do you have any sense as
28 to how long you might be in redirect?

1 MS. MINOR: Maybe 10 minutes.

2 MR. MILLAR: I will suggest we take our break. But
3 why don't we make it a relatively short one, at no more
4 than 15 minutes?

5 And hopefully we can wrap up shortly after that.
6 Thank you.

7 --- Recess taken at 3:21 p.m.

8 --- On resuming at 3:40 p.m.

9 MR. MILLAR: Okay. Why don't we get started again and
10 try and finish up here, unless there are any preliminary
11 matters? Mr. Mondrow would you like to begin?

12 MR. MONDROW: Thank you, Mr. Millar.

13 **CROSS-EXAMINATION BY MR. MONDROW:**

14 MR. MONDROW: Good afternoon, Mr. Beale.

15 MR. BEALE: Mr. Mondrow.

16 MR. MONDROW: Sorry. I am trying to shift a little so
17 you can see me. Is this probably better over here? Why
18 don't I do that? Look at me and speak into the mic. I
19 tried to come up with something fresh for you, Mr. Beale,
20 but I have been unsuccessful, so, instead, you will get a
21 series of random, disjointed questions, but they will be
22 brief, if that is any consolation.

23 The costs for the fiscal year end March 31st, 2010 for
24 these two programs that we've been talking about, the HESP
25 and OSTHI, that relate to fuel use reductions other than
26 electricity reductions totalled, as I understand your
27 evidence, about \$130 million. Those costs were covered or
28 are -- I guess they were covered by the government's -- you

1 called it the fiscal plan. People have referred to it as
2 general revenues.

3 Am I correct in the assumption that most of that
4 \$130 million relates to gas use reduction as opposed to the
5 other miscellaneous fuels mentioned in the legislation?

6 MR. BEALE: That's correct.

7 MR. MONDROW: All right. And we know that section
8 26.1 of the OEB Act provides the government with authority
9 to recover gas-related costs from Ontario's gas
10 distributors. They're named in the legislation. And you
11 mentioned earlier, I think in discussing issues with Mr.
12 Warren, that you had had some discussions with both
13 Enbridge and Union when you were developing the proposed --
14 what became Regulation 66/10.

15 I assume those were discussions regarding recovery of
16 those 2010 fiscal year end costs through gas bills; is that
17 right?

18 MR. BEALE: That's correct.

19 MR. MONDROW: And obviously the government made a
20 determination not to proceed with recovery of the gas
21 portion of these costs. Can you tell us why?

22 MR. BEALE: I'm afraid I can't.

23 MR. MONDROW: Did you make any recommendations in
24 respect of why those costs should not be recovered from gas
25 consumers?

26 MS. MINOR: Again, this is not relevant to this
27 particular issue before the Board.

28 And, again, Hansard speaks for itself. That is all we

1 can say.

2 MR. MONDROW: I didn't ask anything about Hansard.
3 Hansard --

4 MS. MINOR: Well --

5 MR. MONDROW: Excuse me, Ms. Minor, can I respond,
6 please? Hansard talks about prospective recovery, not
7 recovery of the program costs from the year I'm talking
8 about. So Hansard is irrelevant.

9 Secondly, in respect to your first objection, can I
10 just confirm with you, Ms. Minor, perhaps on the record,
11 then, that it is the government's position that this -- in
12 response to this motion, you are addressing only Reg. 66/10
13 and the levy under that reg, and that any constitutionality
14 in respect of any future gas cost levy is a matter for
15 another day? All right.

16 MS. MINOR: Yes.

17 MR. MONDROW: That is helpful. Thank you.

18 And so in respect of my question to Mr. Beale about
19 whether he made any recommendations in respect of recovery
20 of those gas costs, I take it, Ms. Minor, that your
21 response is a refusal to answer that question?

22 MS. MINOR: Yes. It's irrelevant to the issue at
23 hand.

24 MR. MONDROW: All right.

25 Mr. Beale, I have read the Hansard recording of the
26 Q&A in the legislature on this. The answer is, with
27 respect to the minister, not clear to me, but I am not
28 going to ask you to speak for the minister or anyone else

1 in the legislature.

2 MS. MINOR: I think he will be very glad of that.

3 MR. MONDROW: Yes, I am sure you both will. But as
4 the affiant here, I do want to ask you a question. You are
5 the person responsible for these programs. Have you been
6 instructed that future program-related costs will not be
7 recovered through a section 26.1 levy?

8 MS. MINOR: That is not, again, a subject of this
9 hearing. He has already answered as far as he can answer
10 on that.

11 MR. MONDROW: Well, no, he hasn't, Ms. Minor. With
12 respect, I asked him whether he received any instructions.
13 If you want to refuse to answer that, please do so.

14 MS. MINOR: Yes, yes.

15 MR. MONDROW: You refuse to answer that question?

16 MS. MINOR: Yes.

17 MR. MONDROW: Thank you. Okay. Let me just run
18 through these and you can refuse them all, if you wish.
19 Have you been instructed, Mr. Beale, to stop work on future
20 recovery of program costs under this piece of legislation?

21 MS. MINOR: No answer.

22 MR. MONDROW: Refusal, please? Yes or no.

23 MS. MINOR: Yes. Refusal.

24 MR. MONDROW: Are you currently doing any work on
25 recovery of future program costs under section 26.1?

26 MS. MINOR: Refusal.

27 MR. MONDROW: All right. Do you have any cost
28 estimates for the fiscal year end March 31st, 2011 for

1 these programs?

2 MS. MINOR: Refusal.

3 MR. MONDROW: All right. Let me ask you about a
4 statement in your affidavit, please, Mr. Beale, at
5 paragraph 15.

6 The second sentence in paragraph 15 of your affidavit
7 says:

8 "The funding authority for the existing Ontario
9 matching programs..."

10 That's the Home Energy Savings Program and the Solar
11 Thermal Heating Program, as I understand it:

12 "The funding authority for the existing Ontario
13 programs will also sunset on March 31, 2011."

14 Does that mean that these programs will cease to
15 operate?

16 MR. BEALE: What it means is that when the programs
17 were approved in 2007, they were given a four-year funding
18 horizon --

19 MR. MONDROW: Right.

20 MR. BEALE: -- which comes to an end on March 31st,
21 2011.

22 Decisions about what kind of programs and the nature
23 of those programs for next fiscal year have not been made.
24 So that the statement is only repeating what is in the
25 public record, I guess, that the funding approval for these
26 programs, as currently approved, sunsets on March 31st.

27 MR. MONDROW: And you put the statement in your
28 affidavit. What are the implications of that fact for the

1 picture that you were trying to paint, the factual picture
2 you were trying to paint here? I don't understand.

3 MS. MINOR: It is just a matter of accuracy as to what
4 we're talking about, the challenges to this particular
5 regulation.

6 MR. MONDROW: Well, I thought, Ms. Minor, your
7 positions were not talking about anything but the FYE March
8 31st, 2010 levy.

9 The sunset of this funding authority at the end of
10 next year has nothing to do with that regulation, so I am
11 still puzzled about why it is in here. This is a statement
12 in your affidavit, so I would like some explanation of it,
13 please. What are we to take from that fact?

14 MR. BEALE: I think in the light of that comment, it
15 is an extraneous paragraph. I wouldn't read too much into
16 it.

17 MR. MONDROW: So we can strike it?

18 MS. MINOR: No. It is there for context and accuracy.

19 MR. MONDROW: Apparently, it is an irrelevant topic,
20 but because you objected to every single question about
21 recovery of any costs, except those as of fiscal year end
22 March 31st, 2010, so I don't understand.

23 MS. MINOR: If you want to move to strike it, you go
24 right ahead. As far as I am concerned, it is there for
25 context. It describes what the funding was for, and, as we
26 have all agreed, our challenge is to when this particular -
27 - we all know what the challenge is.

28 MR. MONDROW: All right. So in respect of context,

1 will you reconsider in answering my question about
2 estimates for the year end March 31st, 2011? You can't
3 have your cake and eat it, too. Either it is relevant or
4 it is not. Which is it?

5 MS. MINOR: What is the question again?

6 MR. MONDROW: I wondered if Mr. Beale can provide cost
7 estimates for these two programs for the fiscal year ending
8 March 31st, 2011.

9 MR. BEALE: It is an estimate, sure.

10 MR. MONDROW: And as context, are you currently doing
11 any work in respect of recovery of those costs under
12 section 26.1 of the Ontario Energy Board Act?

13 MS. MINOR: And what does that mean, "doing any work"?

14 MR. MONDROW: Are you proceeding to consider or draft
15 regulations, have discussions with stakeholders?

16 MS. MINOR: That is a political decision.

17 MR. MONDROW: I didn't ask whether it is a political
18 decision. I asked whether he is doing any work on it. Is
19 he doing any work on it? His answer is yes or no.

20 MS. MINOR: I am going to direct him not to answer
21 that.

22 MR. MONDROW: So that is still a refusal.

23 All right. So are we going to get those estimates?

24 MR. BEALE: Sure.

25 MR. MONDROW: Can I have an undertaking number?

26 MR. MILLAR: Yes, JT1.11. And, Mr. Mondrow, just to
27 make sure the record is clear, what is the undertaking for?

28 MR. MONDROW: The undertaking is to provide cost

1 estimates for the incentive costs under each of the HESP
2 and OSTHI programs for the government fiscal year ended
3 March 31st, 2011.

4 **UNDERTAKING NO. JT1.11 (1): TO PROVIDE COST ESTIMATES**
5 **FOR THE INCENTIVE COSTS UNDER EACH OF THE HESP AND**
6 **OSTHI PROGRAMS FOR GOVERNMENT FISCAL YEAR ENDED MARCH**
7 **31, 2011.**

8 MR. MILLAR: Thank you.

9 MR. MONDROW: Does that make sense, Mr. Beale, that
10 formulation of the undertaking?

11 MR. BEALE: In fact, I think we already have them in
12 the material that was sworn by Jack Hughes, if you have
13 that document.

14 MR. MONDROW: Yes, I have the material. Maybe you can
15 show me where it is.

16 MR. BEALE: It looks like it is tab Q.

17 MR. MONDROW: Just give me a second. I haven't
18 divided my tabs, so I will just have to leap to the page.
19 This is in the document "Ministry of Energy and
20 Infrastructure..."

21 MR. BEALE: "... Estimates 2010-11." Page 9.

22 MR. MONDROW: Page 9. And sorry, so the two programs
23 are?

24 MR. BEALE: Under the "Transfer Payment" lines, home
25 energy audit and home energy retrofit.

26 MR. MONDROW: These are the total incentive costs
27 under these programs estimated for that year-end?

28 MR. BEALE: Yes. At the time of estimates, yes.

1 MR. MONDROW: And what was the time of estimates?

2 MR. BEALE: I am not sure when they come out. It is
3 sort of after the budget, I believe.

4 MR. MONDROW: Can you give me a --

5 MR. MONDROW: Can you give me a month?

6 MR. BEALE: I don't know, frankly.

7 MS. MINOR: We will check the date and confirm.

8 MR. MONDROW: All right. Thank you very much. Great.
9 Then we don't need a -- well, we will have an undertaking
10 number for the date, then.

11 MR. MILLAR: So that will be JT1.11.

12 **UNDERTAKING NO. JT1.11 (2): TO PROVIDE DATE FOR YEAR-**
13 **END ESTIMATES OF INCENTIVE COSTS.**

14 MR. MONDROW: Sure. Thank you.

15 All right. Mr. Beale you had some discussion with Mr.
16 Warren, and you mentioned some US precedents for these
17 special purpose charge-type levies, which informed, as I
18 understood your evidence, your recommendations on the
19 definition of "special purposes" used in the legislation.

20 First of all, am I recalling your testimony correctly?

21 MR. BEALE: I recall that, yes.

22 MR. MONDROW: All right. Can you tell us which
23 jurisdictions you had reference to?

24 MR. BEALE: Off the top of my head, no, but there are
25 about 22 or 23 of them, last time I looked. Not recently.

26 Some call it special purpose charge. Some call it
27 public benefits charge.

28 Some of these are administered by utilities. Some are

1 administered by third parties. Some of them are
2 administered by governments.

3 MR. MONDROW: All right. Could you take an
4 undertaking to provide us with a summary of the
5 jurisdictions that informed your recommendations? Tell us
6 which of those jurisdictions those were, and perhaps
7 provide a cite to the legislative particulars that you
8 relied on to inform yourself?

9 MS. MINOR: Could you just repeat the question? I'm
10 sorry, I didn't hear it all.

11 MR. MONDROW: Sure. I asked whether we could get
12 information from Mr. Beale, more specific information on
13 which jurisdictions he relied on, in informing himself when
14 making recommendations on development of the definition of
15 "special purposes" in the legislation, and provide
16 particulars of the legislative authorities relevant in each
17 of those jurisdictions for these types of levies.

18 MS. MINOR: Well, I don't recall his answer to be
19 quite that specific. I thought he said he was aware of
20 them, and what they did in other jurisdictions. I don't
21 think he said he relied on them when he was -- for drafting
22 purposes, et cetera.

23 I am not sure what your question is. Do you want to
24 know what American jurisdictions we're aware of that have
25 special purpose charges?

26 MR. MONDROW: No.

27 MS. MINOR: For these kinds of...

28 MR. MONDROW: No. With respect, my question was very

1 clear.

2 First of all, I prefaced my question by confirming my
3 understanding that Mr. Beale's testimony was to the effect
4 that he informed himself with reference to these other
5 jurisdictions in providing recommendations on how to define
6 the special purposes in issue.

7 So is that correct, Mr. Beale? Did you inform
8 yourself by reference to these other jurisdictions?

9 MR. BEALE: By looking at other jurisdictions, I can
10 comment that the areas that are contained in the special
11 purpose appeared to me to be consistent with what is done
12 elsewhere.

13 MR. MONDROW: All right. So Ms. Minor, what I am
14 asking for is a particular list of which those
15 jurisdictions were that Mr. Beale had reference to, and to
16 the extent he considered them, the particulars of the
17 legislative authorities relevant in each of those
18 jurisdictions.

19 MR. BEALE: Is the legislative authority a matter of
20 some interest to you?

21 MR. MONDROW: Yeah.

22 MR. BEALE: All of these things happened within quite
23 a different legal and institutional environment.

24 MR. MONDROW: Precisely. Yes.

25 MS. MINOR: I don't understand how this is really
26 relevant to the issue at hand.

27 MR. MONDROW: He put in evidence, Ms. Minor, your
28 witness put in evidence about what informed him in making

1 recommendations about the special purposes that have become
2 part of this legislation --

3 MS. MINOR: Well, that has nothing to do --

4 MR. MONDROW: -- which are squarely -- sorry, let me
5 finish. Which are squarely in issue. I would like to
6 understand the legislative context for those facts that Mr.
7 Beale says informed him in making his recommendations on
8 how to define these special purposes.

9 MS. MINOR: We will take that under advisement,
10 because in my view, at this point, unless you persuade me
11 otherwise, it has absolutely nothing to do with the test
12 for constitutionality in this case.

13 MR. MONDROW: Well, I would suggest that context is
14 quite important for a court or a regulatory tribunal to
15 make decisions about statutory interpretation and
16 constitutionality, but you and I can argue -- well, you and
17 others and I can argue about that.

18 In the meantime, we are trying to gather information,
19 and I am asking questions about the testimony that your
20 witness put on the record. So it is a little late for you
21 to object to relevance of those questions, in my
22 submission.

23 So I appreciate you taking it under advisement. I
24 would like to know whether that turns into a "yes" or a
25 refusal. I would like to have that clear on the record,
26 please.

27 MR. MKILLAR: We will mark that as JT1.12, and I guess
28 we will see what we get.

1 UNDERTAKING NO. JT1.12: TO PROVIDE DETAILS OF
2 LEGISLATIVE CONTEXT MR. BEALE RELIED ON IN MAKING
3 RECOMMENDATIONS ON HOW TO DEFINE THE SPECIAL PURPOSES.

4 MR. MONDROW: Thank you. Just a little bit more, Mr.
5 Beale.

6 Paragraph 23 of your affidavit, you can turn it up if
7 you wish. I'm not going to parse it. But you mentioned
8 HESP and OSTHI as two examples of various conservation and
9 system reliability measures that the government has
10 undertaken.

11 Can you elaborate on what the other measures are that
12 these two programs are examples of?

13 MR. BEALE: I would point to programs run by the
14 Ontario Power Authority.

15 MR. MONDROW: All right. Anything else?

16 MR. BEALE: No.

17 MR. MONDROW: Okay. What distinguishes these programs
18 from those -- other than the fact they're run by the
19 government and not the OPA -- but substantively, how are
20 these two programs different from those OPA programs?

21 MR. BEALE: I am not making an argument that they are
22 substantively different. They're two --

23 MR. MONDROW: Why wouldn't --

24 MR. BEALE: They're two examples of measures that are
25 undertaken to conserve energy and create a culture of
26 conservation.

27 MR. MONDROW: All right. Why wouldn't -- well, is
28 there any reason, in your mind, why these programs couldn't

1 be run by the OPA, as opposed to the government?

2 MR. BEALE: Historically, the biggest problem has been
3 that they are multi-fuel programs. They make no
4 distinction for a homeowner whether they are trying to save
5 electricity, natural gas, propane, wood.

6 The programs are designed to be sort of a one-stop
7 shop. And a consumer can very quickly make their own
8 determination about what measures they would like to take
9 to save energy in their home, irrespective of whether it is
10 electricity or natural gas.

11 MR. MONDROW: And --

12 MR. BEALE: It would be a great benefit, a great value
13 in having electric and natural gas utilities engaged in
14 these kinds of programs.

15 And I think those are objectives that we all share,
16 actually.

17 MR. MONDROW: These kinds of programs, you mean multi-
18 fuel programs?

19 MR. BEALE: Multi-fuel programs. At the moment, that
20 is not the case.

21 MR. MONDROW: And is that why the government feels it
22 needs to operate these, because there is no home for them,
23 because they're multi-fuel?

24 MR. BEALE: In large part.

25 MR. MONDROW: Okay. Thanks. That is helpful.

26 The provincial programs that we're talking about, the
27 HESP and OSTHI run -- and you have talked a lot about this
28 already -- work in conjunction with federal programs.

1 Do you know how the federal programs are funded?

2 MR. BEALE: They get their appropriation through their
3 treasury board.

4 MR. MONDROW: All right. Let me turn to the question
5 of benefits, just very quickly, hopefully.

6 Your evidence, as I understand it, underscores that
7 everyone -- that is electricity consumers, electricity
8 distributors, electricity transmitters and the IESO -- all
9 benefit from these two programs that we're talking about.
10 Is that a fair reading of your evidence?

11 MR. BEALE: I think we are particularly emphasizing
12 that conservation programs do have these avoided costs and
13 system reliability benefits which do accrue to all parties,
14 and that HESP and OSTHI, as conservation programs, are
15 consistent with those benefits.

16 MR. MONDROW: So each of those parties I mentioned,
17 electricity consumers, electricity distributors,
18 electricity transmitters and the IESO, all share in those
19 benefits?

20 MR. BEALE: In one degree or another.

21 MR. MONDROW: All right. These are program benefits.
22 And there was some discussion earlier about the programs
23 versus the regulatory scheme.

24 In making statements in your evidence about program
25 benefits, is there a distinction intended between benefits
26 from the programs and benefits from the regulatory -- or
27 arising under the regulatory scheme, or are they the same
28 thing?

1 MR. BEALE: I don't quite recall that discussion.

2 MR. MONDROW: Well, forget about the discussion, then.
3 The transcript will reflect that. I recall it quite
4 clearly. But in your mind, is there a distinction between
5 program benefits and benefits under the regulatory scheme?

6 MR. BEALE: Well, let me try to go back to it.

7 As we were talking about it, the benefits flowed from
8 the programs, and the programs, in and of themselves,
9 relied on the regulation for the cost recovery, so chicken
10 and egg. I don't know which way you want to start it.

11 MR. MONDROW: The benefits that support the recovery
12 are the benefits of the programs? The government's -- your
13 affidavit puts forward benefits presumably because the
14 government is relying on the fact of those benefits --

15 MR. BEALE: The fact --

16 MR. MORAN: Let me finish the question, if you don't
17 mind -- is relying on the fact of those benefits in support
18 of the constitutionality of its regulatory scheme and its
19 legislation, and I won't ask you to get into a legal debate
20 on that, but when you make the comment about program
21 benefits, are you distinguishing in your mind between a
22 benefit from the program and a benefit under the scheme?

23 MR. BEALE: I am speaking only of benefits from the
24 program.

25 MR. MONDROW: All right. And am I correct that only
26 the electricity end users -- that is, not the distributors,
27 not the transmitters and not the independent electricity
28 system operator, but only the end users, the consumers,

1 ultimately pay the levies under section 26.1?

2 MR. BEALE: My understanding is that only the
3 consumers are paying the levy.

4 MR. MONDROW: All right. And the other parties that
5 benefit, the IESO, the electricity transmitters and the
6 electricity distributors, bear no cost in the end for the
7 benefits they receive, according to your evidence, under
8 these programs; is that right?

9 MR. BEALE: I would anticipate that would be true.
10 Benefits accrue to the organizations by having a more
11 reliable, stable and efficient grid.

12 MR. MONDROW: But they don't pay anything in the end
13 for those benefits?

14 MR. BEALE: They don't pay anything in the end.

15 MR. MONDROW: All right, fair enough. Thank you. One
16 more question which I can't resist. This will be my last
17 question. In paragraph 26 of your affidavit, you refer to
18 the August 2003 blackout, and I am trying to understand the
19 relationship between the blackout and system reliability
20 which, according to your evidence, HESP and OSTHI
21 contribute to. What is the relevance of the blackout?

22 MR. BEALE: Just it was put in as a matter of context
23 and background. It is a demonstration of how fragile the
24 distribution and transmission system can become. It is not
25 to suggest that OSTHI or HESP would have obviated that
26 particular event, but there are -- there is fragility in
27 the system.

28 MR. MONDROW: All right. I will leave that one there.

1 Thank you for your patience.

2 MR. MILLAR: Thank you, Mr. Mondrow.

3 Absent Ms. Minor, does anyone else have any questions?

4 Mr. Cass?

5 MR. CASS: No. Thank you.

6 MR. MILLAR: Okay. And no one else? Ms. Minor?

7 **RE-EXAMINATION BY MS. MINOR:**

8 MS. MINOR: Okay, Mr. Beale, I want to go back to the
9 Ontario Power Authority planning document that was put to
10 you.

11 MR. BEALE: Hmm-hmm.

12 MS. MINOR: Do you want to take that out? Do you know
13 what contributed to the promulgation of this document? Did
14 government have anything to do with it, with the fact that
15 it promulgated it? It is at page 47, by the way, of the
16 Union Gas material.

17 MR. BEALE: It starts on page 47.

18 MS. MINOR: It is called the "Integrated Power System
19 Plan".

20 MR. BEALE: Right. The government issued a
21 directive -- a directive to the Ontario Power Authority
22 called the Supply Mix Directive, and in the Supply Mix
23 Directive it identified particular objectives that it
24 wished the Ontario Power Authority to reach in relation to
25 conservation, in relation to renewable energy, its
26 expectations on coal phase-out and expectations on other --
27 the supply options, such as nuclear generation.

28 MS. MINOR: And are you aware whether this document

1 required the approval of the Ontario Energy Board before it
2 was acted upon?

3 MR. BEALE: The intention was for the Ontario Energy
4 Board to hold hearings and approve the document, or offer
5 changes to it.

6 Prior to the Board coming to a conclusion, Minister
7 Smitherman at the day asked for the OPA to return to that
8 document, to the planning assumptions, and consider
9 alternatives that he asked for.

10 MS. MINOR: And do you recall what type of
11 alternatives?

12 MR. BEALE: Specifically there was questions related
13 to the extent to which the Ontario Power Authority could
14 accelerate conservation, accelerate the increase in the
15 renewables, to look at a number of storage technologies in
16 terms of its potential in amplifying the plan, and a couple
17 of others, as I recall.

18 MS. MINOR: And what effect did that have on the
19 hearing?

20 MR. BEALE: The hearing was stopped, so the document
21 itself is paused, at the very least, if not completely
22 dead.

23 The ministry, minister, intends to be releasing a
24 long-term energy plan in the next couple of months, which
25 will lead to another supply directive, which will lead to
26 another integrated power system plan by the OPA.

27 MS. MINOR: And I am asking you a speculative question
28 now. If, in fact, the Ontario Energy Board had approved

1 this document, would that have had any effect, in your
2 knowledge, to the ability of government to supplement or
3 complement the conservation programs that it was referring
4 to?

5 MR. BEALE: I don't believe so.

6 MS. MINOR: When Mr. Thompson was asking you about the
7 incentive program, also sometimes referred to as a grant or
8 a rebate, is it fair to say that the ability to receive
9 these amounts of money are dependent upon complying with
10 conditions?

11 MR. BEALE: Yes, they have to be in the right size of
12 building, and they have to be the owner-occupier of the
13 building.

14 MS. MINOR: What do they have to do to get the money?

15 MR. BEALE: In the first case, they have to get an
16 energy audit, which we call the pre-audit. That audit,
17 once completed, gives a homeowner a report on things that
18 could be done.

19 The audit company completes paperwork, which flows
20 through the federal government back to Ontario, and Ontario
21 compensates the homeowner for \$150.

22 When the homeowner has completed retrofits, the
23 auditor goes back, redoes the audit and confirms that
24 measures have been taken, and completes an application for
25 the homeowner, which is processed by the federal government
26 and subsequently by ourselves.

27 MS. MINOR: So is it fair to say that the person who
28 is asking for the money does not get the money unless

1 certain conduct occurs?

2 MR. BEALE: Absolutely.

3 MS. MINOR: What about the other program?

4 MR. BEALE: The other program is administered through
5 the contribution agreement, and the contribution agreement
6 has terms and conditions which have to be complied with.

7 MS. MINOR: And, again, is that related to the conduct
8 of the applicant?

9 MR. BEALE: And verification and validation of the
10 work that's been performed, yes.

11 MS. MINOR: And one of the counsel took you to tab H,
12 which I believe -- oh, it is probably Mr. Thompson, because
13 it was in his affidavit. Or not his affidavit; the
14 affidavit he presented.

15 So if you go to the affidavit of Jack Hughes, that is
16 KT1.8, tab H, and he was referring you to some of the
17 language in this press release.

18 MR. BEALE: Mm-hmm.

19 MS. MINOR: Okay? I am wondering if you could comment
20 on the fourth paragraph, which is a quote from Minister
21 Duncan with respect to the culture of conservation.

22 Can you expand a bit upon that?

23 MR. BEALE: Well, building a culture of conservation
24 has been a pretty consistent theme from the premier down
25 through Minister Duncan through to our current minister.

26 It is an expression of how important the government
27 intends to place on achieving energy efficiency and demand
28 reductions in Ontario, not just in the short term but in

1 the long term.

2 MS. MINOR: I had intended at one point to ask some
3 questions about the relationship between the programs and
4 demand, but we have given an undertaking on that.

5 So I am going to reserve, I think, our ability to
6 respond to some of that, with respect to the undertaking.
7 If there are questions that arise out of that, we can deal
8 with them.

9 Can I take you to tab T of the affidavit of Mr.
10 Hughes? On page 27 -- that is the first page -- there is a
11 reference to "harnessing the power of conservation" and
12 then it gets to the second complete paragraph, starts:
13 "Conservation efforts"?

14 MR. BEALE: Yes.

15 MS. MINOR: "Especially those targeted peak demand can
16 reduce the amount of electricity infrastructure
17 we need. This in turn reduces the cost of the
18 electricity system for all users, while providing
19 benefits to the environment."

20 Do you agree with that statement?

21 MR. BEALE: I do.

22 MS. MINOR: Those are all of my questions.

23 MR. MILLAR: Thank you, Ms. Minor.

24 MR. MONDROW: Mr. Millar, just before we close this
25 part of the record, I will wait for Ms. Minor to finish
26 because I would like to ask something, probably through
27 her.

28 MR. MILLAR: Yes. Ms. Minor, I believe Mr. Mondrow

1 had a question that he was going to put through you.

2 So please go ahead, Mr. Mondrow.

3 MR. MONDROW: Thank you. I had asked for an
4 undertaking at one point. I had a discussion with Mr.
5 Beale about estimates for the program year beginning March
6 31st, 2011.

7 And I was referred to this -- I think it is Exhibit Q
8 of the affidavit of Mr. Hughes, which is the: "Estimates
9 2010-11" at Page 9, in particular, and some programs listed
10 under "Transfer Payments."

11 I am looking at these programs subsequent to finishing
12 my questions, and neither the program names nor the totals,
13 frankly, seem to equate to the two programs we were talking
14 about.

15 I wonder if, before we leave the record and therefore
16 my undertaking, which I thought this responded to, I might
17 be able, Ms. Minor, just to confirm with Mr. Beale that
18 these are, in fact, the same programs and these are the
19 2010, 2011 estimates.

20 I don't see the same program names. Maybe I am not
21 looking at enough of the line items, but...

22 MR. BEALE: In the estimates process, the audit and
23 retrofit numbers are treated separately. They don't show
24 up as a line under HESP.

25 So the first two numbers there are the HESP estimates
26 budget.

27 MR. MONDROW: Yes.

28 MR. BEALE: The second number, 4 million 90, Ontario

1 Renewable Heat Program, that is OSTHI. Treasury Board is
2 very slow in picking up the name changes.

3 And the other programs are unrelated to this
4 particular discussion.

5 MR. MONDROW: Unrelated to the --

6 MR. BEALE: Unrelated to this discussion, or the
7 regulation.

8 MR. MONDROW: Okay. Thank you very much. I
9 appreciate that.

10 MR. MILLAR: Mr. Warren, did you have something?

11 MR. WARREN: I do, just a clarification through
12 counsel, if I could.

13 At various points today, Ontario Regulation 66/10 has
14 been characterized as being, on its face, applicable to a
15 particular fiscal period, and to two programs.

16 And I am just asking for assistance, if counsel could
17 show me where in the text of the regulation, it is limited
18 to a particular recovery period and to two programs.

19 I am not sure anything turns on it. Just a point of
20 clarification.

21 MS. MINOR: Mr. Warren, the regulation refers to the
22 amount of money that can be recovered, and the amount of
23 money is related to a particular period of expense and
24 particular programs.

25 MR. WARREN: Am I right, Ms. Minor, that the only
26 limiting factor in this is the \$53 million, and that we
27 have to go to Mr. Beale's affidavit to determine, A, that
28 it is for a particular fiscal period, and B, that it is for

1 these two programs? Am I right about that?

2 MS. MINOR: Yes.

3 MR. WARREN: Thanks very much.

4 MR. MILLAR: Is there anything else? Okay. I think
5 that concludes today's session. The Board's thanks to the
6 parties, to Mr. Beale and the court reporter. And we are
7 adjourned until December 1st. Thank you.

8 --- Whereupon the conference adjourned at 4:20 p.m.

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ONTARIO ENERGY BOARD

FILE NO.: EB-2010-0184

VOLUME: Technical Conference

DATE: July 25, 2011

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 a motion by the
Consumers Council of Canada in relation to
section 26.1 of the Ontario Energy Board
Act, 1998 and Ontario Regulation 66/10.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Monday, July 25th, 2011,
commencing at 9:28 a.m.

TECHNICAL CONFERENCE

A P P E A R A N C E S

MICHAEL MILLAR

Board Counsel

GONA JAFF

Board Staff

ROBERT WARREN
JULIE GIRVANConsumers Council of Canada,
(CCC)

PETER THOMPSON

Canadian Manufacturers & Exporters
(CME)ROBERT E. CHARNEY
ARIF VIRANI
ROBERT DONATO
ANDREA McGARRY
NICK KENNEDY

Attorney General of Ontario

PAUL KERSMAN

Ministry of Energy

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

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E X H I B I T SDescriptionPage No.

NO EXHIBITS WERE FILED IN THIS PROCEEDING.

U N D E R T A K I N G SDescriptionPage No.

NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING.

1 Monday, July 25, 2011

2 --- On commencing at 9:28 a.m.

3 MR. MILLAR: Good morning, everyone, and welcome.

4 This is Board proceeding EB-2010-0184. We are here
5 today for the examination of a witness, Mr. Beale, pursuant
6 to the Board's Procedural Order No. 11.

7 My name is Michael Millar. I am counsel for Board
8 Staff. I will be acting today as master of ceremonies, but
9 nothing more. There is no one here who can make any
10 rulings. I will ask parties to do their best to work out
11 any difficulties they may have, but no one here can assist
12 you with that.

13 We will take appearances in a moment. I would ask
14 just people who intend to speak on the record today enter
15 an appearance, and then we will swear the witness and get
16 started, unless there are any preliminary matters from
17 anyone.

18 Okay, thank you. As I say, my name is Michael Millar.
19 I am joined today by Gona Jaff of Board Staff. Could I
20 have appearances starting with Attorney General, please?

21 **APPEARANCES:**

22 MR. CHARNEY: Robert Charney.

23 MR. VIRANI: Arif Virani, and to my left is Robert
24 Donato.

25 MR. WARREN: Robert Warren for the Consumers Council
26 of Canada and Aubrey LeBlanc.

27 MR. THOMPSON: Peter Thompson for Canadian
28 Manufacturers & Exporters.

1 MR. MILLAR: Thank you very much. Is there anyone
2 else who will be asking questions today? Mr. Charney,
3 would you like to introduce your witness and I'll just have
4 him sworn in?

5 MR. VIRANI: Our witness is Mr. Barry Beale from the
6 Ministry of Energy.

7 **BARRY BEALE, SWORN**

8 MR. WARREN: Mr. Millar, just before we begin, the
9 purpose of Mr. Beale's attendance or reattendance is to
10 answer questions arising from the delivery of certain
11 undertaking responses and responses to matters taken under
12 advisement in his original cross-examination last November.

13 I don't know that all of those responses have been
14 given or they need to be -- I'm sorry, need to be given,
15 formally entered on the record, or are they exhibits and
16 undertaking responses by virtue of them simply having been
17 delivered?

18 MR. MILLAR: I think if they have been filed,
19 typically we don't require an additional exhibit number be
20 given. If it assists you for the purposes of identifying
21 documents here, we can do so, but I don't think it's
22 strictly necessarily.

23 MR. WARREN: It's not. Thank you. The responses have
24 the numbers on them.

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

26 MR. WARREN: Mr. Beale, good morning.

27 I wonder, Mr. Beale, given it has been some time since
28 you and I were together, if I can spend just a couple of

1 moments re-establishing, if you wish, the chronology and
2 the matters that are in issue here.

3 Am I correct, Mr. Beale, that we are talking about the
4 funding for two programs? One is the program for
5 incentives which -- largely to residential homeowners for
6 building retrofits; is that correct?

7 MR. BEALE: Home Energy Savings Program was one
8 program, yes.

9 MR. WARREN: And the other was for solar installations
10 and is largely an industrial commercial matter; is that
11 correct?

12 MR. BEALE: Commercial institutional, as well.

13 MR. WARREN: They go by the acronyms or letters OSTHI;
14 is that correct?

15 MR. BEALE: Yes.

16 MR. WARREN: And HESP; is that correct?

17 MR. BEALE: Yes.

18 MR. WARREN: And, again, if you would, just to
19 establish the chronology, the original versions, if I can,
20 of these, certainly of the retrofit program, began in
21 approximately 19 -- sorry, 2007; is that correct?

22 MR. BEALE: I believe they were announced in June of
23 2007.

24 MR. WARREN: And for the first period of time, the
25 provincial component of the funding was funded out of
26 general revenue; is that correct?

27 MR. BEALE: Yes.

28 MR. WARREN: And the funding which is in issue in this

1 matter is in respect of what years of the program?

2 MR. BEALE: Fiscal year '09/10.

3 MR. WARREN: Now, in relation to the Green Energy Act,
4 my recollection is that the Green Energy Act was introduced
5 in the provincial house in September of 2009. Is that your
6 recollection?

7 MR. BEALE: No, I think it was passed in May of '09,
8 was the final reading.

9 MR. WARREN: Yes, in May. Thank you very much.

10 And the regulation which is the subject, in part, of
11 this application, came into force in the spring, roughly,
12 March of 2010; is that correct, Mr. Beale?

13 MR. BEALE: I believe it was Gazette'd in March of
14 2010, yes.

15 MR. WARREN: And would I be correct, Mr. Beale, that
16 the two programs which are in issue in this application,
17 they didn't derive from the Green Energy Act, in the sense
18 there was no legislative provision in the Green Energy Act
19 necessary to bring these programs into existence?

20 MR. BEALE: That's correct.

21 MR. WARREN: I thank you for that.

22 Could I ask you, then, to turn up the first of the
23 responses, which is matter taken under advisement, JT1.5?
24 And I am looking at Exhibit 1. It's a document described
25 as "Copy of GEA Rationale for Reallocation of MEI Program
26 Costs to Ratepayers" Do you have that?

27 MR. BEALE: I have that.

28 MR. WARREN: Again, just by overview, if we could

1 establish the context for this, what is the date of this
2 document? I don't see it on it.

3 MR. BEALE: I am afraid I haven't the date for it. We
4 did go back and look for the date, but we were unable to
5 ascertain what the date was. It certainly would have been
6 before the Green Energy Act had been tabled and passed.

7 MR. WARREN: So prior to Green Energy Act, so it would
8 have been certainly at least as early as the early part of
9 perhaps the first quarter of 2009?

10 MR. BEALE: Perhaps. It could have been before that,
11 but I am not sure.

12 MR. WARREN: Okay, fair enough.

13 In terms of the context, by whom was this document
14 prepared?

15 MR. BEALE: One of my staff.

16 MR. WARREN: And was it done at your request?

17 MR. BEALE: It had not been done at my request. I
18 believe this was done at the request of a manager of mine,
19 who was also working on the file.

20 MR. WARREN: And was it done for you?

21 MR. BEALE: I actually don't even recall reading it.

22 MR. WARREN: Do you know whom the intended audience
23 was?

24 MR. BEALE: At this point, I believe it was a
25 discussion between the manager and his staff member.

26 MR. WARREN: And was this document intended to be in
27 support of what became -- or was it a rationale for what
28 became sections 26.1 and 26.2 of the Ontario Energy Board

1 Act?

2 MR. BEALE: I believe it was intended to start
3 assisting in the planning for those two sections in terms
4 of trying to develop part of the policy context further.

5 MR. WARREN: Now, if I could ask you to go to -- it's
6 not paginated, so we will have to work through this. Under
7 the second broad heading "Background"?

8 MR. BEALE: Yes.

9 MR. WARREN: Under the heading "Context", there a
10 reference in the first line to "energy agencies". What is
11 meant by the term "energy agencies"?

12 MR. BEALE: The Ontario Power Authority and -- yeah,
13 the Ontario Power Authority.

14 MR. WARREN: Just the OPA?

15 MR. BEALE: Yes.

16 MR. WARREN: Going down two full paragraphs to the
17 sentence beginning "MEI's involvement in program delivery",
18 in what sense, Mr. Beale, at that stage was the MEI
19 involved in program delivery?

20 And before you answer the question, let me give you
21 the background or the premises on which the question is
22 based. In the course of your first attendance here, you
23 responded to a number of questions, and, as I understood
24 the answers, the provincial government in Ontario had
25 adopted a federal program, an NRCan program, for energy
26 retrofits; is that correct?

27 MR. BEALE: Yes.

28 MR. WARREN: And that the provincial government paid

1 monies to homeowners which -- after the federal government
2 had approved the payments; is that correct?

3 MR. BEALE: That's correct.

4 MR. WARREN: The programs were designed and tested and
5 implemented by federal officials; is that correct?

6 MR. BEALE: The program was designed by federal
7 officials. We affirmed that the measures that were in
8 those programs were measures that we also wished to
9 undertake, and we affirmed that those measures would also
10 have the same schedule of incentives that the federal
11 government had. So yes, we affirmed those things to our
12 satisfaction.

13 MR. WARREN: So in what sense, then -- getting back to
14 my original question -- in what sense was the MEI involved
15 in program delivery?

16 MR. BEALE: There were two aspects of the program.

17 One part of the program the federal government was not
18 involved in; the provincial government had an audit
19 component, which the federal government program relied on
20 but did not subsidize. So the provincial government had in
21 place mechanisms for energy service providers who are
22 trained in providing these energy audits to go into homes,
23 make recommendations to homeowners and provide a report for
24 homeowners, that they could then use to make decisions on
25 investments in energy efficiency. The provincial
26 government refunded up to \$150 of the homeowner's cost for
27 that.

28 The second part of the program is the retrofit part of

1 the program. The homeowner, having made investments in
2 energy efficiency, would have a second audit done by,
3 typically, the same service provider, who would then verify
4 that the measures had been taken and would, on behalf of
5 the homeowner, submit an application for the rebate to the
6 federal government and the province.

7 MR. WARREN: My recollection, Mr. Beale -- and I don't
8 have the reference to hand, but I could look for it -- from
9 your last attendance was that those provincial auditors --
10 sorry, the auditors, I apologize -- that those auditors
11 were originally licensed, if you wish, or accredited --

12 MR. BEALE: They are licensed. They are licensed to
13 use a particular piece of software that is the property of
14 the federal government, NRCan. So yes, they are a licensed
15 to use the software.

16 MR. WARREN: And they were licensed by NRCan, as I
17 understand?

18 MR. BEALE: By NRCan, yes.

19 MR. WARREN: In what sense, then, were they provincial
20 auditors, if they were licensed --

21 MR. BEALE: They worked in Ontario.

22 MR. WARREN: They were federally licensed but they
23 work in Ontario; is that right?

24 MR. BEALE: Yes, and other provinces, obviously.

25 MR. WARREN: And they provided reports to NRCan or to
26 Ministry of Energy? When they had done the original --

27 MR. BEALE: The report itself went to the homeowner.
28 At the time of the audit the homeowner would complete an

1 application form, a provincial application form for the
2 rebate on the cost of the audit.

3 MR. WARREN: And that application form was then sent
4 to whom, federal government or provincial government?

5 MR. BEALE: The application was sent to us; it was a
6 provincial form. The results of the audit were sent to
7 NRCan and ourselves.

8 MR. WARREN: Thank you.

9 If I could take you down to -- sorry, in that same
10 sentence, there is reference to "a structural gap in the
11 energy sector."

12 Can you tell me what that is a reference to?

13 MR. BEALE: Well, I believe the author was making an
14 observation that OPA was restricted to providing programs
15 directed at the electricity consumer, or the electricity
16 sector, and the natural gas utilities, in conducting their
17 own conservation programs, had a similar constraint on
18 programs being directed at natural gas.

19 MR. WARREN: If I could take you to the footnote at
20 the end of that sentence, footnote 2, it says:

21 "Regulatory structure of the industry prevents in
22 large part an electricity utility from recovering
23 costs from anything but conservational
24 electricity."

25 You would understand that the electric utilities are
26 not regulated by the Ontario Power Authority; correct?

27 MR. BEALE: That's true.

28 MR. WARREN: And would I be correct in assuming, then,

1 that the structural gap is in part a reference to a gap in
2 the regulatory structure operated by the Ontario Energy
3 Board?

4 MR. BEALE: The Ontario Energy Board had put in place
5 rules for restricting electricity utilities from offering
6 natural gas programs, yes.

7 MR. WARREN: I understand that. My question was:
8 Would I be correct in understanding, then, that the
9 reference to a structural gap would include the limits on
10 the regulatory authority of the Ontario Energy Board?

11 MR. BEALE: In developing and in implementing multi-
12 fuel programs, yes.

13 MR. WARREN: Now, there is a reference -- if I can ask
14 you to turn over the page -- there is a reference to -- in
15 the first full paragraph, there is a reference to tests
16 cost/benefit tests.

17 MR. BEALE: Yes.

18 MR. WARREN: Then if we go down to paragraph which
19 follows it, there is reference to the total resource cost
20 test. My recollection of your response to a question asked
21 by my friend Mr. Vegh last time was that these programs
22 were not, at the time, and have not been subject to the TRC
23 tests; is that correct?

24 MR. BEALE: That's correct.

25 MR. WARREN: Just going down to the note below it, can
26 you tell me who PK and Ken N are?

27 MR. BEALE: PK is a staff member; Ken N would have
28 been his manager.

1 MR. WARREN: And can you tell me -- the reference
2 there is -- the quote is

3 "I changed to avoid talking about societal tests.
4 'Societal' automatically implies a generalized or
5 socialized benefit, exactly what we want to not
6 say here."

7 Can you tell me why you would not want to say that
8 there?

9 MR. BEALE: Well, I could speculate.

10 I think what he is saying is that these programs have
11 specific benefits to specific classes of customers.

12 And let me go right back to the premise, I think, and
13 the issue, that these multi-fuel conservation programs are
14 more appropriately borne by the natural gas and electricity
15 ratepayers, given they are predominant beneficiaries of
16 these programs.

17 I think the comment is that if that is true, then the
18 costs should be borne by them, not as a societal test, not
19 as a societal cost.

20 MR. WARREN: And finally, on this particular document,
21 there is a reference below to "design a proposed solution,"
22 and there are three alternatives posited; am I reading that
23 correctly? One, two and three, are those three options --

24 MR. BEALE: They are intended to be elements, not
25 alternatives.

26 MR. WARREN: I'm sorry?

27 MR. BEALE: I believe they are elements of the
28 solution, not alternatives to the solution.

1 MR. WARREN: Now, looking at number one, under the
2 definition of "MEI program costs included and excluded from
3 cost recovery process":

4 "MEI would continue to fund activity for propane
5 and oil conservation where there is no pre-
6 existing mechanism for allocating costs
7 directly."

8 What do you mean by "pre-existing mechanism"?

9 MR. BEALE: I am not sure pre-existing -- there just
10 is no mechanism to recover costs from ratepayers that
11 aren't rate-regulated.

12 MR. WARREN: Turning over the page under heading two:
13 "Recovery of non-administered natural gas and
14 electricity conservation programs would be guided
15 by such cost/benefit tests as approved by the
16 Minister."

17 Can you tell me what cost benefit tests have been
18 approved by the Minister for these programs?

19 MR. BEALE: The Minister approved matching federal
20 program measures only. I believe, as we came to understand
21 what we needed to do in this regulation and the limits on
22 the tests that we would be using, we were of the opinion
23 that none of the measures that were involved with these
24 programs were particularly novel to CDM or DSM initiatives.

25 MR. WARREN: Under advisement JT1.5 Exhibit 2, can you
26 turn that up, please?

27 MR. BEALE: Yes, sir.

28 MR. WARREN: Again establishing a context, do you know

1 a date on which this document was --

2 MR. BEALE: Again, we were unable to establish when
3 this was prepared. It was obviously incomplete, and
4 doesn't appear to have been developed any further than what
5 you see here.

6 MR. THOMPSON: Sorry, I didn't hear that.

7 MR. BEALE: I don't have a date for it, and the
8 document itself is incomplete and does not appear to have
9 been completed according to any...

10 MR. THOMPSON: Is it around the same time as the first
11 document?

12 MR. BEALE: I don't -- I wasn't witness to this
13 document either, so I am sorry, I don't know.

14 MR. WARREN: When was the first time you saw this
15 document --

16 MR. BEALE: It was an established document --

17 MR. WARREN: Sorry.

18 MR. BEALE: Pardon me?

19 MR. WARREN: I'm sorry. You hadn't finished your
20 answer. I am sorry, you hadn't finished. I interrupted
21 you.

22 MR. BEALE: No, I am fine.

23 MR. WARREN: Just following up on the question Mr.
24 Thompson asked, we don't know the date. Do we know who
25 authored this document?

26 MR. BEALE: I don't know. In this case I don't even -
27 - I don't have initials that can point me in the right
28 direction. Different staff members had been involved.

1 MR. WARREN: And we don't know the intended audience?

2 MR. BEALE: Again, it's an internal staff document. I
3 am afraid I can't offer very much more than that.

4 MR. WARREN: Reading the document now, Mr. Beale, and
5 looking at the wording, can you draw any reasonable
6 conclusions from it -- sorry, from the context of the
7 document? Does it appear to be a document that would
8 predate the GEA?

9 MR. BEALE: Yes, I would say.

10 MR. WARREN: Is it reasonable to assume, if it
11 predates the GEA, it is done in relation to or as a
12 background for or rationale for the enactment of sections
13 26.1 or sections 26.2 of the Ontario Energy Board Act?

14 MR. BEALE: It would have been a staff document
15 exploring issues around the development and implementation,
16 yes.

17 MR. WARREN: Can I look, then, to the first heading,
18 "Policy Intent"? There is a reference there to a "Suitable
19 accountability framework". Do you know what is meant by
20 that?

21 MR. BEALE: I can presume that there is an expectation
22 that the framework would be transparent to government
23 officials.

24 MR. WARREN: There is a reference in the next
25 paragraph -- I am going to return to that response in a
26 moment, but two paragraphs down, there is a reference to:

27 "Tests would be used as a matter of program
28 discipline, not for debate before a regulator."

1 You would understand, Mr. Beale, that, for example,
2 CDM programs, projects which are delivered by the OPA and
3 by LDCs, are, in varying degrees and varying ways, subject
4 to regulatory oversight or subject to oversight by the
5 Ontario Energy Board; correct?

6 MR. BEALE: That's correct.

7 MR. WARREN: With respect to OPA, the administrative
8 fees are subject to scrutiny by the Ontario Energy Board;
9 correct?

10 MR. BEALE: Yes.

11 MR. WARREN: And with respect to the LDCs, their
12 actual CBM programs themselves have to be, quote, "Board
13 approved"; correct?

14 MR. BEALE: Yes.

15 MR. WARREN: And with respect to these particular
16 costs, the intention from the beginning was that they not
17 be subject, at all, to regulatory -- sorry, to OEB
18 oversight or approval; correct?

19 MR. BEALE: That's correct.

20 MR. WARREN: So the accountability referred to, the
21 suitable accountability framework, would not be an
22 accountability framework which was operated by the Ontario
23 Energy Board; correct?

24 MR. BEALE: That's correct.

25 MR. WARREN: Now, under the heading "Benefits" on the
26 same page, it says:

27 "A measure of acceptable rate impact which may
28 include consideration of provincial policy

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1 objectives related to GHG..."

2 I take it that's greenhouse gas?

3 MR. BEALE: Yes.

4 MR. WARREN:

5 "...emission reduction or other factors (e.g.
6 social equity, R&D). Test such as TRC, RIM,
7 participant tests will need to be reviewed and
8 modified as required. Tests would be used as a
9 matter of program discipline, not for debate
10 before a regulator."

11 We have gone over the point that these were not
12 subject to the TRC. Were these programs at any point
13 subject to the RIM or participant test?

14 MR. BEALE: No, they were not.

15 MR. WARREN: And, again, looking at that paragraph, it
16 says, "not for debate before a regulator", and then under
17 "Suitable accountability framework", it says:

18 "May vary by option depending on depth of
19 reporting requirements but features public
20 reporting not subject to comment by the
21 regulator."

22 At the risk of over-generalizing, Mr. Beale, can you
23 and I agree that the Ontario Energy Board's regulatory
24 scrutiny of CDM programs is forward looking, in the sense
25 that it approves forecast expenditures on CDM programs, as
26 a general rule?

27 MR. BEALE: I believe that's the case.

28 MR. WARREN: In this case we are dealing with now,

1 this would have been monies expended, and so any review by
2 the Ontario Energy Board would have been after-the-fact
3 review of whether these expenditures, for example, met
4 certain tests or were prudent or whatever; correct?

5 MR. BEALE: That would have been correct, yes.

6 MR. WARREN: Just out of curiosity, what does "SBC"
7 refer to?

8 MR. BEALE: I believe it would stand for social
9 benefit charge.

10 MR. WARREN: And I believe that term -- if I recollect
11 the cross-examination last time, that term is a generic
12 term for these kinds of expenditures reflected in these
13 programs; is that right?

14 MR. BEALE: That's correct.

15 MR. WARREN: That's a term in the United States, I
16 believe?

17 MR. BEALE: Yes.

18 MR. VIRANI: Sorry, Mr. Warren, could you please
19 repeat that last question?

20 MR. WARREN: It's a term used in the United States.

21 Now, there are three options so described at the
22 bottom of this page. I would like just to -- if you could
23 just keep your finger on that page and go to the last of
24 the exhibits produced, or the penultimate one, which is
25 JT1.6 and 1.7?

26 I am looking at Exhibit 2. Do you have that document?

27 MR. BEALE: I do.

28 MR. WARREN: I am trying to, if I can -- and perhaps

1 it's apples and oranges, Mr. Beale. The three options that
2 are in JT1.5, Exhibit 2, are they reflected in JT1.6 and
3 1.7? Are they the same options that are discussed there?

4 MR. BEALE: No, they are not.

5 MR. WARREN: And do you know what became of the
6 options described in JT1.5? Were they simply discarded,
7 rejected?

8 MR. BEALE: I believe the option that formed the basis
9 of the regulation was more closely defined with number 2,
10 in the sense that the government directed the OEB to
11 recover funds on those programs, and the funds would have
12 been collected either by Union Gas or Enbridge in the case
13 of the gas distributors, or in this early version the OPA
14 directly rather than the electric utilities.

15 But I think the sense of number 2 is the direction
16 that the regulation ultimately went.

17 MR. WARREN: Okay. Then go to that final -- JT1.6 and
18 1.7 in Exhibit 2, looking at the options there, which of
19 the three options there, which of the options were
20 ultimately selected?

21 MR. BEALE: Option 1, recovery from electric utilities
22 and IESO.

23 MR. WARREN: And going to the following page, under
24 "Financial Implications", there is a reference in the last
25 line to "reduced risk from a policy perspective". Can you
26 tell me what that refers to?

27 MR. BEALE: Sorry, what page are you on?

28 MR. WARREN: Page 4 of that document, JT1.6 and 1.7,

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1 Exhibit 2.

2 MR. BEALE: Under "Government Fiscal Impact"?

3 MR. WARREN: Yes.

4 MR. BEALE: What was the question? I'm sorry.

5 MR. WARREN: There is a reference to "reduced risk
6 from a policy perspective". What is that?

7 MR. BEALE: I am sorry, could you -- I am not seeing
8 the word "risk" here.

9 MR. WARREN: "Financial Implications", "Government
10 Fiscal Impact":

11 "As shown In the table below, the third option
12 would have the larger recovery for the
13 government; however it is the least favorable
14 option from a policy standpoint. MEI's preferred
15 option and recommendation, has a no fiscal impact
16 and reduced risk from a policy perspective."

17 MR. BEALE: Okay.

18 MR. WARREN: Do you know what that "reduced risk from
19 policy perspective" refers to?

20 MR. BEALE: I believe that the option that was
21 selected for the subject of the regulation had a greater
22 consensus internally to government than externally to
23 government than the option that was not proceeded with,
24 which is the recovery of natural gas costs.

25 So it had a less -- it was less favourable from a
26 policy standpoint, because the consensus hadn't fully been
27 reached on how to proceed.

28 MR. WARREN: Those are my questions. Thank you very

1 much. Thank you, Mr. Beale.

2 MR. MILLAR: Thank you, Mr. Warren.

3 Mr. Thompson, are you prepared to proceed?

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

5 MR. THOMPSON: Yes. I am going to follow much the same
6 approach that Mr. Warren did, by just referring to these
7 documents that were attached to the Attorney General's
8 letter of June the 30th, Mr. Beale.

9 so starting with the first one, which is Exhibit 1 of
10 JT1.5, the timing of this, I think you said, could have
11 been Q4 of 2008 or Q1 of 2009; is that --

12 MR. BEALE: It would have been about that, yes.

13 MR. THOMPSON: Okay. Now, you indicated to Mr. Warren
14 that the program funding with respect to these two programs
15 dated back to, I think you said, 2007; is that right?

16 MR. BEALE: Program was approved in June of 2007. I
17 believe the first payments under the program would have
18 been December of '07, January of '08.

19 MR. THOMPSON: And what is the fiscal period for the
20 Ministry?

21 MR. BEALE: April 1st to March 31st.

22 MR. THOMPSON: So those initial payments would fall,
23 then, in fiscal '08; is that correct?

24 MR. BEALE: The first payments under the program would
25 have fallen in fiscal '07, '08.

26 MR. THOMPSON: So is that the way you refer to it:
27 '07, '08?

28 MR. BEALE: '07, '08, yes.

1 MR. THOMPSON: And then for the fiscal period '08,
2 '09, were there any budget amounts to be recovered under
3 the auspices of these plans? Or was that, again, all
4 budgeted to come from Ministry revenues?

5 MR. BEALE: It was all -- yeah, it was Ministry
6 revenues, government revenues.

7 MR. THOMPSON: And then for the fiscal period '09,
8 '10, do I understand that at this time something was
9 budgeted for recovery under this mechanism?

10 MR. BEALE: Yes. It was noted that should the Green
11 Energy Act pass, that there would be a recovery of funds
12 from those two programs.

13 MR. THOMPSON: Okay. So if we go to this document,
14 the last document that Mr. Warren was discussing with you,
15 which is the Exhibit 2 of JT1.6 and 1.7, that's towards the
16 end of the package and it's entitled: "Ministry of Energy
17 and Infrastructure MB 20 for MEI's conservation cost
18 recovery from electricity utilities and the IESO" and on
19 the bottom left-hand corner it appears to have a date of
20 February 2010?

21 MR. BEALE: February 18th is the exact date.

22 MR. THOMPSON: Thank you. And that was a presentation
23 to -- well, what was the audience for that presentation?

24 MR. BEALE: This was a briefing note to the Treasury
25 Board.

26 MR. THOMPSON: So is that document your work, or
27 someone else in your department?

28 MR. BEALE: It would have received review by our

1 corporate department, by our legal services branch. It was
2 authored by me and my group, yes.

3 MR. THOMPSON: And looking at the second paragraph in
4 the Ministry request, it appears that the amount of revenue
5 budgeted for the '09, '10 period initially was
6 \$142.8 million?

7 MR. BEALE: I believe that's correct.

8 MR. THOMPSON: Well, that's the number that's in the
9 fourth line of the second paragraph; is that what that
10 number means?

11 MR. BEALE: Yes, sir.

12 MR. THOMPSON: Thank you. So then backing up to
13 JT1.5, which we think is no later than Q1 of 2009, is this
14 the point in time when someone conceived the possibility of
15 recovering amounts from ratepayers?

16 MR. BEALE: I really don't know what that point in
17 time was, or if this document influenced that.

18 Certainly we were considering the provisions in the
19 Green Energy Act that would allow this cost recovery, and
20 were beginning -- and I would say judging from these
21 documents, we were at a very early stage of considerations
22 on how that might, in fact, flow.

23 MR. THOMPSON: Well, am I correct that funding started
24 off from MEI revenues, and then at some point subsequently
25 the idea was conceived that some of these costs could be
26 recovered from ratepayers?

27 MR. BEALE: Yes, I think that's true. Probably more
28 in the context of having been asked a question, since these

1 conservation programs are essentially saving electricity
2 and natural gas, much like utility programs, could we --
3 would it be reasonable to develop a proposal like this for
4 the cost recovery of these programs?

5 MR. THOMPSON: So did that come from the Minister,
6 that request?

7 MR. BEALE: I can't actually recall where that came
8 from, I'm sorry.

9 MR. THOMPSON: In any event, the heading on this
10 document is: "Reallocation of MEI program costs to
11 ratepayers."

12 Is that the label that was used to describe the
13 concept?

14 MR. BEALE: That was the label that was on this
15 document. I don't know that it had ever been articulated
16 as that in any other document.

17 MR. THOMPSON: Now, in terms of what prompted this,
18 the facts that prompted this consideration of a proposal to
19 reallocate MEI program costs to ratepayers, if we go down
20 on the first page of this document, it says under
21 "Rationale":

22 "MEI's multi-fuel conservation programs have been
23 more successful than anticipated in terms of
24 levels of participation and are placing
25 increasing pressures on the Treasury."

26 What does that mean? Does that mean that --

27 MR. BEALE: Just what it says.

28 MR. THOMPSON: Does that mean that the revenues that

1 were being budgeted for the program spending turned out to
2 be under-budgeted?

3 MR. BEALE: Yes.

4 MR. THOMPSON: And what was the measure of the
5 deficiency, roughly at the time that this document was
6 created?

7 MR. BEALE: Not knowing what the document was -- if
8 this document was prepared in the first or third quarter of
9 the fiscal year '08, '09, the program would have been
10 running only for nine months. So it would have been a
11 reflection on a program that had not been in the market
12 very long, and was experiencing some success.

13 The quantum under discussion here, I am not quite sure
14 what that staff member might have been referring to, but I
15 think it is more a statement of fact that the program was
16 successful and placing pressure; it was an outcome of the
17 program, not a rationale for this particular document.

18 MR. THOMPSON: Well, are you able to give us some sort
19 of order of magnitude of the deficiency that was being
20 created in the MEI's budget as a result of the take-up of
21 these programs being more successful than anticipated?

22 MR. BEALE: I believe in the first year of the full
23 delivery of the program, we went back to Treasury Board and
24 requested an additional \$19 million to the program in I
25 think it was the third quarter. It was in rough numbers as
26 you have asked for.

27 MR. THOMPSON: And then in the second year, what was
28 the additional request, or I guess request for additional

1 funds is what you are describing; right?

2 MR. BEALE: Well, I guess in March sometime after
3 this, or probably even after the Green Energy Act had been
4 tabled, the federal government announced that they intended
5 to increase their program, increase the incentive levels
6 for their program, and it would have been about another
7 \$80 million that our program would have required to match
8 the federal government.

9 MR. THOMPSON: But did that prompt a return to
10 Treasury Board with a request for further funds?

11 MR. BEALE: No. That was done through the budget-
12 setting process. It was not a submission in the same sense
13 we spoke of earlier with that Treasury Board submission.

14 MR. THOMPSON: I see so --

15 MR. BEALE: It was part of the budget process.

16 MR. THOMPSON: So it led to a much larger number in
17 the budget than the previous year?

18 MR. BEALE: Yes, for that program; for that fiscal
19 year, yes.

20 MR. THOMPSON: All right. And is it around that time
21 that this concept emerged, reallocation of MEI program cost
22 to ratepayers?

23 MR. BEALE: No. I think we have already established
24 that this document would have been before that. This
25 document -- this document would have been produced in what
26 would have been the first full year of delivery of this
27 program, where our experience with the program was not
28 high.

1 And at that time, we were already seeing that the
2 program was going to be successful.

3 MR. THOMPSON: All right. So would I be correct to
4 understand, then, it's the 19 million, approximately, that
5 was the deficiency at or about the time this concept of
6 reallocation of MEI program cost to ratepayers emerged?

7 MR. BEALE: It may have been. I don't know the date
8 on this document. I do know in around the time that we did
9 go back to Treasury Board. It was in November or December
10 of that year. This could have been before. It could have
11 been after.

12 It could have been a general statement acknowledging
13 that the program was showing some success and would be
14 placing some pressure on our budgets.

15 MR. THOMPSON: All right. Now, Mr. Warren asked you -
16 - I am on the next page -- the initials PK and Ken. N., and
17 on the following page is a reference to Paul K. Is PK and
18 Paul K. one and the same?

19 MR. BEALE: Yes, they are.

20 MR. THOMPSON: All right. And Paul K. is a member
21 your staff. Is Ken N. a member of your staff, as well?

22 MR. BEALE: He was at that time.

23 MR. THOMPSON: And are either of these gentlemen the
24 author of this document, or do you know who the author of
25 the document is?

26 MR. BEALE: I am presuming the author is PK, since the
27 notes seem to be from him.

28 MR. THOMPSON: And his position within the Ministry

1 was what?

2 MR. BEALE: He would be a senior policy advisor in the
3 conservation policy unit.

4 MR. THOMPSON: Now, on the next -- sorry, on the page
5 where Paul K. appears, it's page number 3.

6 MR. BEALE: Yes.

7 MR. THOMPSON: Under "Implementation", it says:

8 "MEI seeks the necessary legislative changes to
9 enable a flexible and transparent cost recovery
10 process..."

11 Did I correctly understand you to say that those
12 legislative changes were the amendments to the GEA Act that
13 you were discussing with Mr. Warren?

14 MR. BEALE: I believe that would be correct, yes.

15 MR. THOMPSON: Now, there is a -- I believe it's a
16 slide presentation that follows, which is Exhibit JT1.5,
17 Exhibit 3, and it's prepared on April the 20th, 2009,
18 apparently.

19 And on the cover sheet of this, at the top, there is a
20 note, "Exhibit program cost recovery 2009-04-27 plus PK's
21 comments." Can you just explain what this document was,
22 and who presented it and to whom it was presented?

23 MR. BEALE: My recollection was that it was presented
24 to the Minister or his staff. The document was prepared
25 about a month after the Green Energy Act had been passed.
26 So this would have been our first opportunity of taking the
27 Green Energy Act as passed and begin to have a discussion
28 on how we could see the regulation being put together and

1 implemented; but a very early document, again, in the cycle
2 of regulation development.

3 MR. THOMPSON: The next document is J1.5B, Exhibit 1.
4 I don't think there is a date on it. Can you help me with
5 the date of it?

6 MR. BEALE: I have to apologize. I am not sure why
7 the date was not included on the deck, but the date of the
8 presentation was December 9th, 2009.

9 MR. THOMPSON: Sorry?

10 MR. BEALE: December 9th --

11 MR. THOMPSON: November?

12 MR. BEALE: December 9th. Sorry, maybe I am not
13 speaking quite clearly enough. December 9, 2009.

14 MR. THOMPSON: Yes. And this was a presentation by
15 whom to whom?

16 MR. BEALE: I recall this presentation. This
17 presentation was to the Minister. I would have been
18 present. Others would have, as well.

19 MR. THOMPSON: So did you present it or did others
20 present it?

21 MR. BEALE: I probably presented it, yes. I can't
22 recall precisely, but typically I would.

23 MR. THOMPSON: By this time, would I be correct that
24 the '09/10 fiscal -- fiscal '09, fiscal '10 budget had in
25 it this \$142,800,000, anticipated recovery from the
26 mechanism included?

27 MR. BEALE: Yes. That would be correct, had the full
28 proposal gone forward, yes.

1 MR. THOMPSON: Now, the second page of this document,
2 there is a reference to:

3 "MEI staff have worked extensively with internal
4 and external stakeholders..."

5 MR. BEALE: Yes.

6 MR. THOMPSON: Could you describe for me what is meant
7 by "internal stakeholders"?

8 MR. BEALE: We would have had -- we certainly had
9 discussions with the Ontario Energy Board. We had
10 discussions with the various accounting and Treasury Board
11 officials that would have been having an interest in how
12 this regulation would be put together.

13 MR. THOMPSON: And the external stakeholders, from
14 what I have read in the material, appear to include
15 Enbridge, Union, IGUA and the Electricity Distributors
16 Association; is that right?

17 MR. BEALE: Yes.

18 MR. THOMPSON: Can you tell me why that subset was
19 selected as the external stakeholders?

20 MR. VIRANI: We would object to that question. The
21 specific categorization of stakeholders is irrelevant to
22 this constitutional analysis.

23 The Board's decision on the motion, dated June 8th,
24 indicated that the stakeholder consultations were
25 irrelevant, and they were redacted for that purpose.

26 MR. THOMPSON: The next page under issue portioning
27 the charges has a list of considerations, one of which is:

28 "What is the constitutional law assessment of

1 whether the recovery may be viewed as a
2 regulatory charge or tax?"

3 I take it, then, that that issue had been identified
4 by somebody as of that point in time?

5 MR. BEALE: Sorry, what page are you on, Mr. Thompson?

6 MR. THOMPSON: It's page 5 of this exhibit, JT1.5(b),
7 Exhibit 1.

8 MR. BEALE: Yes.

9 MR. THOMPSON: And it's under "Considerations on which
10 customer class is charged and for how much," the last
11 bullet point:

12 "What is the constitutional law assessment of
13 whether the recovery may be viewed as a
14 regulatory charge or tax?"

15 And I concluded from that, that that issue had been
16 recognized as being an issue at that point in time?

17 MR. BEALE: It was a consideration, yes.

18 MR. THOMPSON: Can you tell me whether any
19 stakeholders were taking the position that what was going
20 on was unconstitutional?

21 MR. VIRANI: Again, I'm sorry, Mr. Thompson. We would
22 object to that question. What the stakeholders' views were
23 about the constitutionality of the assessment is not
24 relevant as per the Board's decision, and I would refer you
25 to that Decision of June 8th, at page 13 of the decision:

26 "Matters dealing with stakeholder considerations
27 are not relevant and their disclosure may be
28 prejudicial."

1 MR. THOMPSON: Well, what about the Minister's
2 assessment? Is that relevant?

3 MR. BEALE: The Minister would --

4 MR. VIRANI: The Minister's -- one moment, Mr. Beale.

5 The Minister's assessment would form part of the
6 solicitor/client privilege that attaches to the
7 solicitation and provision of that advice, which is
8 privileged and it was not -- it was also upheld, that claim
9 of privilege was also upheld by the Board in the June 8th
10 decision.

11 MR. THOMPSON: Thank you.

12 On page 9 of this particular exhibit, Mr. Beale, under
13 the heading "Cash flow" the third bullet point reads:

14 "To meet the July 31, 2010 accounting rule,
15 collection from customers must precede remittance
16 of the funds to the government, or otherwise the
17 utility will incur a negative cash flow by
18 remitting funds to government before collecting
19 from customers, something utilities oppose."

20 What is the July 31, 2010 accounting rule that's
21 referenced there?

22 MR. BEALE: The remittance of the assessment was into
23 a special purpose account, which is an accounting treatment
24 for receiving revenues of this kind, which allows them to
25 go into an account but not into general revenue.

26 My understanding of the accounting rules surrounding
27 the SPA is they are a cash account and need to have been
28 received by July 31st of whatever particular year it was,

1 because that was the date at which the books were closed.

2 That's my understanding of the accounting treatment,
3 but it is an accounting tool.

4 MR. THOMPSON: Now, this document dated December 9,
5 2009 concludes with some timelines at page 15, dealing with
6 writing the regulation, Ministry approval, LRC and Cabinet
7 approval.

8 Do you know generally whether that timeline was
9 adhered to?

10 MR. BEALE: Not quite. If you look down the task, the
11 first reference for government approval would have been to
12 go to LRC on January 25th. In fact, we went to LRC on --
13 and I will give you the date for JT1.7, which was February
14 22nd. We went to LRC on February 22nd and we went to
15 Treasury Board a week in advance of that, on February 18th.

16 MR. THOMPSON: So a bit of slippage?

17 MR. BEALE: A bit of slippage.

18 MR. THOMPSON: What does "LRC" stand for?

19 MR. BEALE: That's the Legislation and Regulations
20 Committee of Cabinet, which reviewed the regulation and
21 recommended it to Cabinet.

22 MR. THOMPSON: So this document that we referred to
23 earlier, JT1.6 and 1.7, dated February 18, is pretty close
24 to the time when they went to LRC?

25 MR. BEALE: A week before. It was considered a step
26 that we needed to make before going to that Cabinet
27 committee.

28 MR. THOMPSON: And this document contains a slight

1 change in the game plan, where it concludes there would be
2 no recovery from gas utilities; that's in the first
3 paragraph on page 1?

4 MR. BEALE: Yes.

5 MR. THOMPSON: And it goes on to say that the cost
6 recovery would be limited to the 53.695 million from
7 electricity utilities only?

8 MR. BEALE: That's right.

9 MR. THOMPSON: And the rationale for that change in
10 plan was what?

11 MR. VIRANI: Sorry, we would object to that response,
12 as well, Mr. Thompson.

13 The basis upon which that decision was taken involved
14 political considerations, which are irrelevant as per the
15 Board's order of June 8th.

16 MR. THOMPSON: All right. Well, then, I will just
17 confine myself to the words of the document, then.

18 The second paragraph goes on and references the 142.8
19 million minuted in the 2009, '10 -- it's got RB - R, small-
20 b -- capital-R, small-b, capital P.

21 What does that stand for?

22 MR. BEALE: That's the budget submissions that
23 Ministries make for the coming fiscal year.

24 MR. THOMPSON: So the date of the '09, '10 budget
25 submission that included 142.8 million would have been
26 approximately what?

27 MR. BEALE: It would have been in the first -- final
28 quarter of the preceding year, of '07, '08.

1 MR. THOMPSON: All right. Thank you.

2 The document on the second page talks about a rate
3 increase expected to be approved by the Ontario Energy
4 Board. Was it then contemplated that these assessments
5 would be approved by the OEB for inclusion in rates?

6 MR. BEALE: The intention would be for the assessment
7 to be directed to the Ontario Energy Board, who would then
8 invoice the LDC community for their pro-rata share of that
9 assessment.

10 MR. THOMPSON: All right. Well, I think when the
11 Board issued those invoices, it was quite careful to say in
12 its covering letter this was not a rate approved by the
13 Board, or words to that effect. Do you recall that?

14 MR. BEALE: I don't have the letter with me, but that
15 is consistent with what I recall; yes.

16 MR. THOMPSON: Now, moving forward, then, to section 3
17 of this document where there is discussion of options, Mr.
18 Warren was talking to you about this page, but under option
19 2, it says:

20 "The ministry could forego all recovery in fiscal
21 2009-10. A portion of the minuted revenue that
22 was expected to be recovered in this fiscal year
23 could be partially offset from MEI savings that
24 were identified through the third quarter report,
25 however there would still be a fiscal impact of
26 \$38.8 million..."

27 Do you see that?

28 MR. BEALE: I do.

1 MR. THOMPSON: And then if you go over to the next
2 page, starting at the bottom of the page where it's
3 discussing government fiscal impact, just stopping there,
4 what does that mean?

5 MR. BEALE: Government fiscal impact?

6 MR. THOMPSON: Right.

7 MR. BEALE: The fiscal impact of any one of these
8 options on the government's fiscal plan.

9 MR. THOMPSON: Could I equate that if there is a
10 shortfall in an amount the government has budgeted, that
11 would be a government fiscal impact?

12 MR. BEALE: It could be.

13 MR. THOMPSON: Could be, okay. And then at the top of
14 the page 5, there is a chart for these options 1, 2 and 3;
15 do you see that?

16 MR. BEALE: Yes.

17 MR. THOMPSON: And the minuted recovery in the first
18 column, that I understand was the amount that was
19 originally included in the budget for '09 and '10?

20 MR. BEALE: Yes.

21 MR. THOMPSON: And then in the second column, what's
22 being identified there is the proposed recovery under
23 options 1, 2 and 3 that are described on the previous
24 pages?

25 MR. BEALE: That's correct.

26 MR. THOMPSON: And then the third column has "Savings
27 Identified in Q3". What does that refer to?

28 MR. BEALE: Those are internal Ministry savings that

1 were identified at the third quarter as not being required
2 to meet the purposes of the Ministry.

3 MR. THOMPSON: All right. And so under option 2, if
4 you go back to the page 3, this is where there would be no
5 cost recovery. Under option 2, there would be a fiscal
6 impact of \$38.8 million. That's what it's saying in words
7 there. Have I read that correctly?

8 MR. BEALE: That's right.

9 MR. THOMPSON: And am I correct that that's the
10 difference between the 142.8 of revenues that had been
11 budgeted and the savings of 104?

12 MR. BEALE: Yes.

13 MR. VIRANI: Mr. Thompson, just if it may assist, and
14 I apologize for our copying, but in the far right column
15 which is sort of shaded, it meant to indicate those
16 figures.

17 So the first figure on the first line is, in
18 parentheses, 14.9; the second figure is 38.8, not in
19 parentheses; and the third figure is 125.4 in parentheses.

20 So I apologize if that wasn't clear enough in terms of
21 the way the material copied.

22 MR. THOMPSON: Okay. Well, I figured that's what must
23 be there. But, in any event, am I correct, Mr. Beale, that
24 when you collect 53.7, the government is \$14.9 million
25 ahead of the game?

26 MR. BEALE: Allowing for the savings, yes, identified,
27 and, in your words, ahead of the game \$125 million in the
28 event that option 3 was selected.

1 MR. THOMPSON: Right. And is that the -- when Mr.
2 Warren asked you about reduced risk from a policy
3 perspective, does that encompass the perception that the
4 government would be ahead of the game would be an
5 unsatisfactory policy perspective?

6 MR. BEALE: I don't believe that that was part of the
7 consideration. It was simply an observation that there had
8 been insufficient consensus on moving forward with that
9 option.

10 MR. THOMPSON: The Cabinet document, which is the
11 Exhibit 3, does it have a date?

12 MR. BEALE: Yes. That's the one I referred to as
13 February 22nd, 2010. That's the legislation and
14 regulations committee approval form.

15 MR. THOMPSON: Oh, thank you. Thanks very much.
16 Those are my questions.

17 MR. MILLAR: Is there anybody else?

18 Okay, unless there are any closing remarks from
19 anyone, I think that concludes --

20 MR. VIRANI: Sorry, Mr. Millar, if we could just
21 adjourn for ten minutes just to discuss whether we would be
22 doing any re-examination of our witness?

23 MR. MILLAR: Sorry. Of course, yes. I forgot that,
24 yes. Why don't we take a ten-minute break and we will come
25 back?

26 MR. VIRANI: Thank you very much.

27 --- Recess taken at 10:37 a.m.

28 --- On resuming at 10:47 a.m.

1 MR. MILLAR: We are back. I will turn it over to Mr.
2 Virani, who I understand has a couple of redirect
3 questions.

4 **RE-EXAMINATION BY MR. VIRANI:**

5 MR. VIRANI: Thank you, Mr. Millar.

6 Mr. Beale, in terms of your cross-examination by Peter
7 Thompson, he took you to a document, which I would ask you
8 to turn up. It's JT1.6 and 1.7, Exhibit 2.

9 And you were looking at a chart, which is on page 5 of
10 that document at the top of the page?

11 MR. BEALE: Yes.

12 MR. VIRANI: And Mr. Thompson was asking you about the
13 various column headings, and he asked you about the savings
14 identified in Q3; do you see that column?

15 MR. BEALE: Yes.

16 MR. VIRANI: Can you explain to us how that figure of
17 104 million was determined or calculated?

18 MR. BEALE: In our third quarter report, the Ministry
19 departments would have been looking at their budget
20 forecast, their commitments, and identifying any savings
21 that they might anticipate for the end of the fiscal year.
22 And as I recall, that was the estimate that came from the
23 combined Ministry of Energy and Infrastructure budget
24 reconciliation to the end of the year.

25 MR. VIRANI: Can you explain the relationship between
26 that figure and that calculation and the programs that are
27 in issue in this litigation?

28 MR. BEALE: One of the options had been to recover

1 only from electricity utilities, for example, and that
2 recovery would have been \$54 million, roughly, obviously
3 less than the minuted amount that had been approved for the
4 Ministry.

5 The Treasury Board submission was identifying that,
6 because of the savings that were identified, there would
7 have been no additional impact on the fiscal plan.

8 We weren't asking for any new money, as a result.

9 MR. VIRANI: And the savings identified, were those --
10 as part of the 104 million, were those savings that relate
11 to the two programs at issue here?

12 MR. BEALE: No. Those are the savings from other
13 parts of the Ministry.

14 MR. VIRANI: Thank you.

15 I have no further questions, Mr. Millar.

16 MR. MILLAR: Thank you very much.

17 I think that concludes our session today. Thank you
18 to all the parties, and we are adjourned.

19 --- Whereupon the Conference adjourned at 10:50 a.m.

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Ministry of the
Attorney General
Constitutional Law Branch

720 Bay Street, 4th Floor
Toronto ON M7A 2S9

Tel: (416) 326-0131
Fax: (416) 326-4015
arif.virani@ontario.ca

Ministère du
Procureur général
Direction du droit constitutionnel

4^e étage, 720 rue Bay
Toronto ON M7A 2S9

Tél.: (416) 326-0131
Télé.: (416) 326-4015
arif.virani@ontario.ca



Via e-mail

November 26, 2010

Mr. Robert Warren
Weir Foulds
Suite 1600, P. O. Box 480
130 King St. W.
Toronto, ON M5X 1J5

Mr. Ian Mondrow
Gowling Lafleur Henderson
1 First Canadian Place, Suite 1600
100 King St.
Toronto, ON M5X 1G5

Ms. Elisabeth DeMarco
Macleod Dixon
79 Wellington St. W, Suite 2300, PO Box 128
Toronto, ON M5K 1H1

Mr. George Vegh
McCarthy Tetrault
TD Bank Tower, Box 48, Suite 4700
Toronto, ON M5K 1E6

Dear Sirs and Madam:

RE: Motion by the Consumer's Council of Canada ("CCC") and Aubrey LeBlanc in relation to s. 26.1 of the *Ontario Energy Board Act, 1998* (the "Act") and Ontario Regulation 66/10

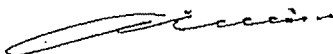
Board File No.: EB-2010-0184

Attorney General of Ontario, Response to matters taken Under Advisement and Undertakings from the Cross-Examination of the Government's Witness

Please find enclosed the Attorney General of Ontario's Response to matters taken under advisement/undertakings from the cross-examination of the Government's witness, which took place on November 16, 2010.

Please note that the responses to certain questions taken under advisement (Items JT 1.4, 1.5, 1.5B (p.78), 1.6, and 1.7) are not contained in the enclosed package. Those responses are forthcoming, and will be provided to counsel at the earliest opportunity.

Yours truly,



Arif Virani
Counsel

cc: Remaining Intervenors (by e-mail)

**RESPONSE TO MATTERS TAKEN UNDER ADVISEMENT/UNDERTAKINGS, FROM
THE CROSS-EXAMINATION OF THE GOVERNMENT'S WITNESS, NOV. 16, 2010**

Number	
JT 1.1	Undertaking: To advise if there are any other changes between contents of the Affidavit of Barry Beale, Exhibit A, to the grant table amounts located at exhibit KT 1.1, p.12. Transcript p. 20, lines 18-20 Response: The content of the information in Affidavit Exhibit A and the federal Grant Table found at KT 1.1, p.12 is consistent. The differences in the publications are: • The federal information covers federal rebates only, while the provincial brochure provides rebate numbers that include both federal and matching provincial rebates. • The "Notes" have been condensed in the provincial brochure due to space requirements. • Due to a printing error, the version of the provincial brochure at Exhibit A failed to include one measure (relating to mobile furnace replacements). This was corrected in future versions.
JT 1.2	Undertaking: To provide analysis of the Peak Demand reductions brought about by the HESP and OSTHI programs. Transcript, p.47, lines 24-25 Response: • HESP: Reduction of 11,912 KW, calculated for Fiscal Year 2009/10, for all households • OSTHI: Reduction of 39 KW, calculated for Fiscal Year 2009/10, for all institutions

**Energy/Capacity and Green House Gas calculations
For HESP, OSTHI**

HESP:

- a. Based on NR Can (Hot 2000) information, we estimate annual electricity savings from electricity attributable to HESP measures undertaken in fiscal 2009 = 2.91 GJ/household
- b. We estimate the number of HESP retrofit files in FY 2009 at 107,209
- c. We estimate the total electricity savings at 311,978 GJ
- d. We discount by 12% free-ridership, yielding 274,540.6 GJ or 76,239,917 kWh
- e. We estimate this to be equivalent to removing 7,942 houses off the grid at an average of 9,600 kWh per house per year
- f. We estimate the peak demand removed off the grid at 11,912 kW, calculated as 7,942 house at 1.5kW each at peak (undertaking JT 1.2)
- g. We estimate the average demand suppressed at 9,530 kW, calculated as 7,942 houses at 1.2 kW each average (undertaking JT 1.8)
- h. We estimate the reduction in CO₂ to be 12,961 T calculated as 76,239,917 kWh * 170 g/kWh (Environment Canada's factor for 2008 – the most recent available figure) (undertaking JT 1.10)

OSTHI:

- a. We estimate total electricity savings attributable to OSTHI measures undertaken in FY 09/10 at 898 GJ, or 249,500 kWh.
- b. Using the same house hold assumptions as in HESP, we estimate this to be the equivalent of taking 26 homes off the grid
- c. We estimate the peak demand removed off the grid at 39 kW (undertaking JT 1.2) and the average demand removed at 31kW (undertaking JT 1.9)
- d. We estimate the reduction in CO₂ to be 42 T calculated at 170 g/kWh (Environment Canada's factor for 2008—the most recent available figure) (undertaking JT 1.10)

Caveats and limitations:

1. The originating data for HESP was accepted from NR Can based on, their HOT 2000 software model, considered an industry standard for this kind of work. We believe that the electricity savings are underestimated by their model since it does not account for the significant AC load reduction caused by the installation of 32,585 Energystar central air conditioners under HESP in FY 09/10--the largest source of peak MW savings.

	2. Some of the input assumptions are sources in general Ministry use and correspondence from the OPA, including the use of 9,600 kWh/year for the average house in Ontario, 1.5 kW per house at peak, and 1.2 kW per house average. We believe these are reasonable for this purpose 3. The methods used are not intended for precise calculations, but rather reasonable estimates. For example, the OSTHI energy savings have been converted to peak savings using residential input assumptions, as analogous commercial input assumptions are not available. 4. The OSTHI originating data is from estimates provided by the OSTHI applicant at application time and may be inaccurate for this reason. 5. The net free rider ship factor used in HESP (12%) is an estimate based on recent program review undertaken by NRCan for this purpose. 6. The 9,600 kWh per house used in the calculations is a current (2010) estimate but the 1.5kW at peak and 1.2kW average per house are the latest available figures (from the OPA, 2005). 7. The OSTHI demand data may be underestimated since most output of the solar water panels is at and around peak time.
JT 1.3	Undertaking: To make best efforts to advise if written estimates exist for the program funding allocation for HESP and OSTHI. Transcript p.65, lines 15-22 Response: There were no written estimates provided, only verbal advice was provided in June 2007 based on an estimate of Ontario's anticipated share of the federal program, which was to be matched by the province.
JT 1.5a	Undertaking: To confirm why O. Reg. 66/10 was not published in the Environmental Registry for comment. Transcript p.77, lines 2-12

	Response: Answered at Transcript p.79, lines 22-24
JT 1.8	Undertaking: To make best efforts to provide the number of megawatts saved from the HESP program. Transcript, p.143, lines 6-28, p.144, lines 14-15 Response: Demand suppressed = 9,530 kW, calculated for Fiscal Year 2009/10, for all households. (For calculation methodology, see Response to Undertaking JT 1.2)
JT 1.9	Undertaking: To make best efforts to provide the number of megawatts saved from the OSTHI program. Transcript, p.143, lines 27-28, p.144, lines 1-15 Response: Demand suppressed = 31 kW, calculated for Fiscal Year 2009/10, for all institutions. (For calculation methodology, see Response to Undertaking JT 1.2)
JT 1.10	Undertaking: To provide calculation of anticipated quantified greenhouse gas emissions reduction associated with HESP and OSTHI. Transcript p.150, lines 14-16

	Response: • HESP: Reduction of 12,961 tonnes CO₂, calculated for Fiscal Year 2009/10, for all households • OSTHI: Reduction of 48 tonnes CO₂, calculated for Fiscal Year 2009/10, for all institutions (For calculation methodology, see Response to Undertaking JT 1.2)
JT 1.11 (1)	Undertaking: To provide cost estimates for the incentive costs under each of the HESP and OSTHI programs for government fiscal year ended March 31st, 2011. Transcript, p.158, lines 4-7 Response: Answered at Transcript p.158, lines 11-28
JT 1.11 (2)	Undertaking: To provide a date for the year-end estimates of incentive costs, for Fiscal Year 2010-11. Transcript, p.159, lines 12-13 Response: In accordance with the Standing Orders of the Legislative Assembly, the Estimates must be tabled in the Legislature within 12 sitting days following the release of the Provincial Budget. The Provincial Budget is normally released towards the end of March. Due to Spring Break/Constituency Week, typically Estimates are tabled between April and early May. The current year's Printed Estimates were tabled on April 22, 2010 (considered the date of publication).

JT 1.12	Under Advisement: To take under advisement whether to provide details of the legislative context Mr. Beale relied on in making recommendations on how to define the special purposes in s. 26.2. Transcript, p. 162, lines 5-12, p.163, lines 1-3 Response: Information from the United States was reviewed at the time as background with respect to the purposes/activities related to the public benefits funds employed in other jurisdictions. The Affiant was aware of this information, but did not rely upon it. The particular legislative or regulatory requirements within each jurisdiction were not reviewed. The specific information from the US jurisdictions reviewed at the time is not available. Attached are summaries of the information pertaining to each of the relevant 22 US jurisdictions, generated in response to this question taken under advisement. (See Exhibits 1-22, attached)
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UNDERTAKING NO. JT1.12:

22 EXHIBITS ATTACHED

EXHIBIT 1: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. MICHIGAN: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

DSIRE™

Database of State Incentives for Renewables & Efficiency

U.S. DEPARTMENT OF ENERGY | Energy Efficiency & Renewable Energy

North Carolina Solar Center

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11/18/10



Michigan

Incentives/Policies for Renewables & Efficiency

Low-Income and Energy Efficiency Fund (LIEEF)

Last DSIRE Review: 03/12/2010

Program Overview:

State:	Michigan
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Photovoltaics, Wind, Biomass, Fuel Cells, CHP/Cogeneration, Anaerobic Digestion
Applicable Sectors:	Commercial, Industrial, Residential, Nonprofit, Schools, Local Government, State Government, Tribal Government, Agricultural, Institutional
Types:	Energy efficiency, low-income assistance (renewable energy projects have been funded, but the LIEEF is not required to fund renewables)
Charge:	Varies by utility (\$83.8 million annually in total)
Web Site:	http://www.michigan.gov/lieefund

Summary:

The Low-Income and Energy Efficiency Fund (LIEEF), a statewide public benefits fund, is administered by the Michigan Public Service Commission (PSC), which issues periodic requests for proposals (RFPs) for prospective projects. The LIEEF was authorized by the state's restructuring legislation (Act 141), enacted in June 2000.* The purpose of the LIEEF is to provide energy assistance for low-income customers, to provide conservation and efficiency measures to reduce energy use and energy bills of low-income customers, and to promote energy efficiency among all customer classes. However, the PSC has emphasized that the fund does not provide any direct funding to homeowners or renters. Interested applicants should review currently available requests for proposals to ensure they qualify before contacting the PSC for additional information. Some recent RFPs include \$8.1 million for the development of an energy efficiency and renewable energy financing system; \$8.5 million for renewable energy investments and energy efficiency upgrades by non-profits, schools, and public agencies; and \$2 million for investigations into the feasibility of offshore wind technologies. Current RFP information is available on the program website listed at the top of this page.

The original source of funding for the LIEEF resulted from securitization savings that exceeded the amount needed to achieve a 5% electric-rate discount for residential and business customers. Detroit Edison was the only electric utility with securitization savings that exceeded the amount necessary to fund the required rate reduction under Michigan's restructuring legislation. Detroit Edison remitted approximately \$45 million annually to the LIEEF until the PSC determined in February 2004 that there were no longer any excess securitization savings to support the fund. As a result, the PSC established a surcharge on Detroit Edison's distribution rates; this surcharge generates \$39.9 million annually. In addition,

in a rate-case settlement with Consumers Energy in December 2005, the PSC directed the utility to contribute \$26.5 million annually to the LIEEF from its electricity customer base. Further PSC ratemaking action in November 2006 directed Consumers Energy to contribute an additional \$17.4 million annually from its natural gas business. Thus total annual funding now amounts to roughly \$83.8 million.

Both Detroit Edison and Consumers Energy -- Michigan's largest utilities -- recover costs through customer charges. In a November 2001 order that established the procedural framework for the LIEEF, the PSC decided that 75% of monies awarded will support grants for energy-efficiency projects and energy assistance for low-income residents, and the remaining 25% will support grants for energy-efficiency projects to benefit all customer classes. The PSC began distributing LIEEF awards in February 2002. Note that some renewable energy projects -- including wind turbines, photovoltaic (PV) systems, anaerobic digesters and other biomass projects -- have received funding from the LIEEF.

According to the October 2009 LIEEF Report, approximately \$488 million** in grants has been awarded over the lifetime of the fund, of which roughly \$124.7 million (26.9%) has been for energy efficiency projects (including renewables). As of March 2010, two RFPs (out of 29 in total) have been issued to specifically support the installation of end-use renewable energy technologies, with ultimate awards totaling \$11.5 million. Several others have addressed other aspects of renewable energy development (e.g., the feasibility of offshore wind). There is no expiration date for the LIEEF.

**The language relating to utility funding of the LIEEF was originally contained in MCL §460.10d. This section no longer applies and has been removed from the code, but the LIEEF continues to receive funding from Detroit Edison and Consumers Energy through PSC rate-case settlements.*

***The \$488 million figure includes a \$25 million in special allocations from the state legislature.*

Contact:

Cornell Pettiford
 Michigan Public Service Commission
 Management Services Division, Energy Grants Section
 P.O. Box 30221
 Lansing, MI 48909
 Phone: (517) 241-6140
 E-Mail: pettifordc@michigan.gov
 Web Site: <http://www.michigan.gov/mpsc>

EXHIBIT 2: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. ILLINOIS: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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11/18/10



Illinois

Incentives/Policies for Renewables & Efficiency

Energy Efficiency Trust Fund

Last DSIRE Review: 05/19/2010

Program Overview:

State:	Illinois
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Lighting, Duct/Air sealing, Building Insulation, Windows, Custom/Others pending approval, Appliances, Other Efficiency Measures
Applicable Sectors:	Utility, Multi-Family Residential, Low-Income Residential
Types:	Energy Efficiency, low-income energy assistance
Total Fund:	\$54 million (total for 18 years from 1998-2015)
Charge:	Utilities contribute annually a pro rata share of a total amount of \$3 million

Authority 1:

§ 20 ILCS 687/6-1 et seq.

Date Enacted:

12/16/1997 (amended 2007)

Date Effective:

12/16/1997

Expiration Date

12/12/2015

Authority 2:

§ 220 ILCS 5/16-111.1

Date Enacted:

06/30/1999

Date Effective:

06/30/1999

Summary:

Illinois's 1997 electric-industry restructuring legislation created separate public benefits funds that support renewable energy and residential energy efficiency. The efficiency fund is known as the Energy Efficiency Trust Fund. Electric utilities and alternative retail electric suppliers contribute annually a pro-rata share of a total amount of \$3 million, based on the number of kilowatt-hours sold during the previous year. The funding mechanism was established for 10 years in January 1998 and was renewed until December 12, 2015 in August 2007.

The Energy Efficiency Trust Fund is administered by the Illinois Department of Commerce and Economic Opportunity (DCEO), which is authorized to determine how funds are used. Projects eligible for funding include energy-efficiency upgrades for low-income residents, new construction and building retrofits, window upgrades, appliance upgrades, lighting upgrades, insulation and other efficiency measures approved by the DCEO. Currently, the Energy Efficiency Trust

Fund supports the Illinois Energy Efficient Affordable Housing Construction Program, which provides funding to not-for-profits to support energy efficiency in low-income housing (both new construction and retrofits), as well as several other energy efficiency initiatives. For details regarding the Energy Efficiency Trust Fund's programs and projects funded, see the 2007 Annual Report.

It should be noted that DCEO also administers programs mandated through Illinois' Energy Efficiency Portfolio Standard (SB 1592 in 2007). Funding through that source supports additional energy efficiency programs on public buildings. Programs funded through this source began in 2008.

In June 1999, Illinois and ComEd reached a settlement as part of the state's approval of ComEd's merger with PECO Energy. Through a one-time payment by ComEd, the settlement created a \$250 million fund to support renewable energy and energy efficiency, and to preserve and enhance natural areas and wildlife habitats throughout the state. This fund, known as the Illinois Clean Energy Community Trust (CECT), is administered by the Illinois Clean Energy Community Foundation. Of the \$250 million, approximately \$200 million - \$225 million is allocated to energy-efficiency projects, renewable-energy projects and wildlife-habitation projects, while at least \$25 million is allocated to "clean" coal projects.

Contact:

David Baker

Illinois Department of Commerce and Economic Opportunity

Bureau of Energy and Recycling

620 East Adams Street

Springfield, IL 62704

Phone: (217) 785-3948

E-Mail: david.s.baker@illinois.gov

Web Site: http://www.commerce.state.il.us/dceo/Bureaus/Energy_Recycling/Energy/

EXHIBIT 3: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. CALIFORNIA: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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U.S. DEPARTMENT OF ENERGY | Energy Efficiency & Renewable Energy

North Carolina Solar Center

IREC

11/19/10



California

Incentives/Policies for Renewables & Efficiency

Public Benefits Funds for Renewables & Efficiency

Last DSIRE Review: 07/22/2010

Program Overview:

State:	California
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Solar Thermal Electric, Photovoltaics, Landfill Gas, Wind, Biomass, Hydroelectric, Geothermal Electric, Municipal Solid Waste, (Note: small hydro is 30 MW or less), Anaerobic Digestion, Small Hydroelectric, Tidal Energy, Wave Energy, Ocean Thermal, Fuel Cells using Renewable Fuels
Applicable Sectors:	Commercial, Industrial, Residential, General Public/Consumer, Utility, Institutional
Types:	Renewables, Energy Efficiency, RD&D
Total Fund:	Renewables: 2002-2006: \$135 million annually*; 2007: \$135 million annually*; 2008-2011: \$65.5 million annually* Efficiency: \$228 million annually RD&D: \$62.5 million annually Beginning 2005, natural gas subaccount baseline funding of \$12 million with increase of up to \$3 million annually, capping at \$24 million
Charge:	Rates vary by utility and customer type: Renewables: ~1.6 mills/kWh Efficiency: ~5.4 mills/kWh RD&D: ~1.5 mills/kWh

Summary:

California's 1996 electric industry restructuring legislation ([AB 1890](#)) directed the state's three major investor-owned utilities (Southern California Edison, Pacific Gas and Electric Company, and San Diego Gas & Electric) to collect a "public goods surcharge" on ratepayer electricity use from 1998 through 2001 to create public benefits funds for renewable energy (\$540 million), energy efficiency (\$872 million), and research, development & demonstration (RD&D) (\$62.5 million).

Subsequent legislation in 2000 ([AB 995](#) and [SB 1194](#)) extended the programs for 10 years beginning in 2002, with annual funding of ~\$135 million* for renewable energy programs (at the time projected to be ~\$150 million annually for 2007-2011), \$228 million for energy efficiency programs, and \$62.5 million for RD&D. In September 2005, the California Public Utilities Commission (CPUC) boosted energy efficiency funding to \$2 billion for 2006 – 2008.

SB 1036, enacted in 2007, made changes to renewable energy programs consequently reducing collections to \$65.5 million annually* (projected to be ~\$72 million annually) for 2008-2011. Calendar year 2007 actual collections totaled ~\$145.8 million.

Renewable Energy Program

Beginning 2008, the California Energy Commission manages the renewables funds through three programs:

- Existing Renewable Facilities Program - 20% (\$14.40 million/year)
- Emerging Renewables Program - 79% (\$56.88 million/year)
- Consumer Education Program - 1% (\$720,000/year)

The Existing Renewable Facilities Program provides production incentives, based on kilowatt-hours generated, to support existing renewable energy facilities. Under SB 1250's revised program structure, effective January 1, 2007, facilities must reapply for funding on an annual basis in order to establish that calendar year's target price and production incentive cap. Although existing wind facilities are technically eligible for funding, they currently do not require assistance. Therefore, all Existing Renewable Facilities Program funds are available for eligible existing solid-fuel biomass facilities and solar thermal electric facilities.

The Emerging Renewables Program is administered through a rebate program. Through 2006, photovoltaics, solar thermal electric, fuel cells that use renewable fuels, and wind turbines were eligible under this program. However, effective January 1, 2007, only small wind and fuel cells using renewable fuels are eligible, with the program's solar component replaced by the New Solar Homes Partnership program. As part of the \$3.35 billion California Solar Initiative, the 10-year, \$400 million New Solar Homes Partnership Program is focused on encouraging solar installations in the residential new construction market. Its goal is to install 400 MW of solar capacity by the end of the program and have 50 percent of new homes at that time built with solar systems.

The Consumer Education Program provides funds to promote renewable energy and help build the market for emerging renewable technologies.

Energy Efficiency Programs

The California Public Utilities Commission (CPUC) oversees the allocation of energy efficiency funds for program implementation to each of the four investor-owned utilities in California: Pacific Gas & Electric (PG&E), Southern California Edison, Southern California Gas Company, and San Diego Gas & Electric. (The original restructuring legislation did not address surcharges on natural gas companies; AB 1002, signed in 2000, established a gas surcharge for energy efficiency, low income assistance, and RD&D, beginning in 2001.) Every year, the CPUC approves each utility's plan for efficiency programs, which the utility then carries out within its service territory. A number of programs are also coordinated on a statewide basis.

See the financial incentive section of DSIRE's California page for individual utility energy efficiency incentive programs.

Energy efficiency programs are designed to provide a fair distribution of funds among residential and nonresidential customers, while maximizing energy savings. There are special programs overseen by the Low-Income Oversight Board, to provide energy efficiency services specifically for low-income households.

Public Interest Energy Research (PIER) Program

The PIER Program annually awards funds to support electricity and natural gas RD&D projects focusing on the following program areas:

- Building Efficiency
- Demand Response
- Advanced Grid Technology
- Advanced Electricity Generation
- Renewable Energy Technologies
- Energy-Related Environmental Research
- Industrial/Agricultural/Water End-Use Energy Efficiency
- Transmission and Distribution
- Transportation
- Energy Innovations Small Grant Program

- Climate Science

**The total amount collected each year is adjusted annually at a rate equal to the lesser of the annual growth in electric commodity sales or inflation, as defined by the gross domestic product deflator.*

Contact:

Energy Efficiency Program
California Public Utilities Commission
4th Floor - 505 Van Ness Ave
San Francisco, CA 94102
Phone: (415) 703-2776
Web Site: <http://www.cpuc.ca.gov/PUC/energy/Energy+Efficiency/>

Tony Goncalves
California Energy Commission
Renewable Energy Program
1516 9th St.
MS-45
Sacramento, CA 95814
Phone: (916) 651-2917
Phone 2: (916) 653-8251
E-Mail: tgoncalv@energy.state.ca.us
Web Site: <http://www.energy.ca.gov/renewables>

EXHIBIT 4: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. COLORADO: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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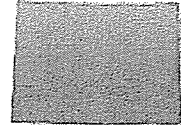
Database of State Incentives for Renewables & Efficiency

U.S. DEPARTMENT OF
ENERGY | Energy Efficiency &
Renewable Energy

North Carolina **Solar Center**

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Colorado

Incentives/Policies for Renewables & Efficiency

Boulder - Climate Action Plan Fund

Last DSIRE Review: 12/17/2009

Program Overview:

State:	Colorado
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Technologies not specified
Applicable Sectors:	Commercial, Industrial, Residential
Types:	Renewable energy, energy efficiency, transportation
Total Fund:	\$860,265 in the first year and up to \$1,342,000/year thereafter through 3/31/2013
Charge:	Maximum tax rates for electricity customers: Residential: \$0.0049/kWh Commercial: \$0.0009/kWh Industrial: \$0.0003/kWh
Web Site:	http://www.bouldercolorado.gov/index.php?opti...

Authority 1:

Ballot Issue 202 (Climate Action Plan Tax)

Date Enacted:

11/7/2006

Authority 2:

Boulder Revised Code 3-12

Date Effective:

4/1/2007

Expiration Date

3/31/2013

Summary:

In November 2006, citizens of Boulder, Colorado, voted to approve Ballot Issue No. 202, authorizing the city council to levy and collect an excise tax from residential, commercial and industrial electricity customers for the purpose of funding a

climate action plan to reduce greenhouse gas emissions. The plan outlines programs to increase energy efficiency, increase renewable energy use, reduce emissions from motor vehicles, and take other steps toward the goal of meeting the Kyoto Protocol.

Beginning April 1, 2007, and expiring March 31, 2013, the initial tax rate is set at \$0.0022/kWh for residential customers, \$0.0004/kWh for commercial customers, and \$0.0002/kWh for industrial customers. The city council has the authority to increase the tax after the first year up to a maximum permitted tax rate of \$0.0049/kWh for residential customers; \$0.0009/kWh for commercial customers; and \$0.0003/kWh for industrial customers. Voluntary purchases of utility-provided wind power are exempt from the tax.

Contact:

Kara Mertz
City of Boulder
Local Environmental Action Division
1300 Canyon Blvd.
P.O. Box 791
Boulder, CO 80306
Phone: (303) 441-4900
E-Mail: mertzka@boulder.colorado.gov

EXHIBIT 5: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. CONNECTICUT: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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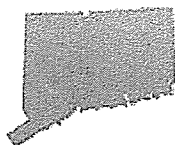
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Connecticut

Incentives/Policies for Renewables & Efficiency

Connecticut Clean Energy Fund (CCEF)

Last DSIRE Review: 11/14/2010

Program Overview:

State:	Connecticut
Incentive Type:	Public Benefits Fund
Eligible Renewable/Other Technologies:	Photovoltaics, Biomass, Hydroelectric, Fuel Cells, CHP/Cogeneration, Hydrogen, Tidal Energy, Wave Energy, Ocean Thermal, Ethanol, Biodiesel, Other Distributed Generation Technologies
Applicable Sectors:	Commercial, Industrial, Residential, Utility, Institutional, All
Types:	Renewables
Total Fund:	\$20 million annually
Charge:	\$0.001 per kilowatt-hour for Connecticut Light and Power (CL&P) and United Illuminating (UI) customers
Web Site:	http://www.ctcleanenergy.com

Authority 1:

Conn. Gen. Stat. § 16-245n

Date Enacted:

4/1998

Date Effective:

1/1/2000

Expiration Date

None specified

Summary:

Connecticut's 1998 electric restructuring legislation (Public Act 98-28) created separate funds to support energy efficiency and renewable energy.* The efficiency fund is known as the Energy Efficiency Fund, and the renewables fund is known as the Connecticut Clean Energy Fund.

A surcharge on Connecticut ratepayers' utility bills provides the funding for the Connecticut Clean Energy Fund. In 2000-2001 the charge was set at \$0.0005 per kilowatt-hour (0.5 mill per kWh), rising to \$0.00075 per kWh (0.75 mill per kWh) in 2002-2003 and "not less than" \$0.001 per kWh (1 mill per kWh) beginning July 1, 2004. The Connecticut Clean Energy Fund is administered by Connecticut Innovations, a quasi-governmental investment organization granted a significant amount of flexibility by the Connecticut General Assembly to develop programs and fund projects that meet the fund's

mission. Connecticut Innovations receives guidance from the Clean Energy Advisory Committee, whose members are appointed by the Connecticut General Assembly, Connecticut's governor and the chairman of Connecticut Innovations. The Connecticut Clean Energy Fund is governed by the Renewable Energy Investment Board, which is statutorily appointed. The Department of Public Utility Control (DPUC) is required to approve a comprehensive plan for the fund.

The Connecticut Clean Energy Fund is authorized to invest in solar-electric energy, solar-thermal energy, wind energy, ocean-thermal energy, wave or tidal energy, fuel cells, landfill gas, hydrogen production and hydrogen conversion technologies, low-impact hydropower, low-emission advanced biomass conversion technologies, alternative fuels produced in Connecticut and used for electricity generation (including ethanol and biodiesel), usable electricity from combined heat and power (CHP) systems with waste-heat recovery systems, thermal storage systems, geothermal, and "other energy resources and emerging technologies which have significant potential for commercialization and which do not involve the combustion of coal, petroleum or petroleum products, municipal solid waste or nuclear fission."

Programs began in earnest in January 2000. Connecticut Innovations has utilized a variety of funding mechanisms to support the mission of the Connecticut Clean Energy Fund, including grants and rebates, convertible debt, equity investments and subsidies for various ventures. With Connecticut Clean Energy Fund funding, Connecticut Innovations has created and currently administers the Solar PV Rebate Program, the Solar Lease Program, Fuel Cell Performance Monitoring Program, the CT Clean Energy Communities Program, the CT Clean Energy Community Innovations Grant Program, the Clean Energy Climate Solutions Program, the Operational Demonstration Program, and the On-Site Renewable DG Program. For details on most of these programs -- including funding awards -- see the most recent Connecticut Clean Energy Fund annual report and the individual program records on DSIRE.

In addition, each of Connecticut's municipal electric utilities is required by statute (Conn. Gen. Stat. § 7-233y) to establish a fund to provide renewable energy, energy efficiency, conservation and load-management programs. To support these funds, a surcharge is imposed on the customers of electric municipal utilities according to the following schedule: 1.0 mills on and after January 1, 2006; 1.3 mills on and after January 1, 2007; 1.6 mills on and after January 1, 2008; 1.9 mills on and after January 1, 2009; 2.2 mills on and after January 1, 2010; and 2.5 mills on and after January 1, 2011. Municipal electric utilities must adopt a comprehensive plan for the expenditure of the monies collected, and the plans must be consistent with the comprehensive plan of the state's Energy Conservation Management Board (ECMB).

** Connecticut's restructuring legislation also created a systems benefits charge to fund public education, weatherization and energy conservation measures for low-income residents, storage and disposal costs for spent nuclear fuel, and post-retirement costs for decommissioned nuclear reactors.*

Contact:

Information - CCEF
 Connecticut Clean Energy Fund
 865 Brook Street
 Rocky Hill, CT 06067
 Phone: (860) 563-0015
 Fax: (860) 563-4877
 E-Mail: info@ctcleanenergy.com
 Web Site: <http://www.ctcleanenergy.com>

EXHIBIT 6: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. DELAWARE: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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Delaware

Incentives/Policies for Renewables & Efficiency

Delaware Electric Cooperative - Green Energy Fund

Last DSIRE Review: 08/20/2010

Program Overview:

State:	Delaware
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Lighting, Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Solar Water Heat, Solar Space Heat, Photovoltaics, Wind, Geothermal Heat Pumps, Fuel Cells using Renewable Fuels
Applicable Sectors:	Commercial, Industrial, Residential, Nonprofit, Rural Electric Cooperative, Agricultural
Types:	Renewables, energy efficiency
Total Fund:	\$206,000 annually (based on 2008 retail electricity sales)
Charge:	\$0.000178/kWh
Web Site:	http://www.dnrec.delaware.gov/energy/services...

Authority 1:

26 Del. C. § 363

Date Enacted:

07/21/2005

Authority 2:

Delaware Electric Cooperative Renewable Resources Program Regulations

Date Effective:

02/01/2009 (as amended)

Authority 3:

S.S. 1 for S.B. 119

Date Enacted:

07/28/2010

Summary:

Under the 2005 Delaware renewable portfolio standard (RPS) legislation, electric cooperatives were allowed to opt out of the RPS schedule if they met certain other requirements. One such requirement was that they contribute to the existing Green Energy Fund for investor-owned utilities or create their own green energy fund supported by an equal surcharge (i.e. \$0.000178/kWh). In 2010 the Delaware RPS was amended by SS 1 for S.B. 119 and the section (26 Del. C. § 363) detailing the obligations of electric cooperatives was slightly revised. While these amendments change several other opt-out requirements, the provision mandating green energy fund contributions in the event of an opt-out remains unchanged.

The Delaware Electric Cooperative, the state's lone cooperative, opted out of the RPS requirements and established its own green energy fund. Based on 2008 retail electricity sales data from the DEC annual report, the fund has an annual income of approximately \$206,000. The surcharge for the investor-owned utility fund was doubled in 2007 through legislation, but the surcharge for the Cooperative's fund was not affected.

The green energy fund supports the Cooperative's Green Energy Program Incentives, which include rebates for distributed renewable energy systems. The eligible technologies listed in this entry are based on those described in the program regulations. Incentive programs for a given technology may or may not be active at any point in time.

Contact:

Scott Lynch

Delaware Department of Natural Resources and Environmental Control

Delaware Energy Office

1203 College Park Drive, Suite 101

Dover, DE 19904

Phone: (302) 735-3480

Fax: (302) 739-1840

E-Mail: scott.lynch@state.de.us

Web Site: <http://www.dnrec.delaware.gov/energy/Pages/default.aspx>

EXHIBIT 7: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. DISTRICT OF COLUMBIA: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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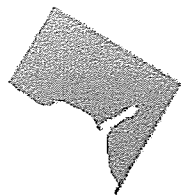
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District of Columbia

Incentives/Policies for Renewables & Efficiency
Sustainable Energy Trust Fund

Last DSIRE Review: 09/24/2010

Program Overview:

State:	District of Columbia
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Solar Water Heat, Solar Space Heat, Photovoltaics, Wind, Biomass, Geothermal Electric, Anaerobic Digestion
Applicable Sectors:	Commercial, Industrial, Residential, General Public/Consumer, Utility, Institutional
Types:	Energy efficiency, low-income assistance, renewables
Total Fund:	\$7.5 million in 2009 \$15 million in 2010 \$17.5 million in 2011 \$20 million in 2012 and each subsequent year
Charge:	Non-bypassable surcharge based on kWh use
Web Site:	http://www.dcpssc.org/customerchoice/whatis/el...

Authority 1:

DC Code § 8-1773.01 § 8-1774.01 et seq.

Date Enacted:

10/06/2008 (subsequently amended)

Date Effective:

10/22/2008

Summary:

The District of Columbia's Retail Electric Competition and Consumer Protection Act of 1999 required the DC Public Service Commission (PSC) to establish a public benefits fund to provide energy assistance to low-income residents, and to support energy-efficiency programs and renewable-energy programs. This fund, known as the Reliable Energy Trust Fund (RETF), took effect in 2001. In October 2008, the District of Columbia enacted the Clean and Affordable Energy Act (CAEA), which effectively eliminated the RETF and replaced it with the Sustainable Energy Trust Fund (SETF). This program will be administered by a third-party "Sustainable Energy Utility" (SEU) which will be selected to develop, coordinate, and provide programs for the purpose of promoting the sustainable use of energy in the District of Columbia.

The SETF is financed by a non-bypassable surcharge on the electric and natural gas bills of utility customers who are not Residential Aid Discount (RAD) or Residential Essential Service customers. The surcharge for natural gas customers is calculated on a per therm basis and is assessed at \$0.011 in Fiscal Year (FY) 2009, \$0.012 in FY 2010, and \$0.014 in FY 2012 and each subsequent year. The surcharge for electric customers is calculated on a per-kilowatt-hour basis and is assessed at \$0.0011 in FY 2009, \$0.0013 in FY 2010 and \$0.0015 in FY 2011 and each subsequent year. The October 2008 legislation also established a separate Energy Assistance Trust Fund (EATF). The EATF collects a surcharge of \$0.006/therm from natural gas sales. It collects \$0.0000607/kWh from electric sales in general, plus an additional assessment \$0.00069/kWh for June - September 2010. Electricity collections were formerly set at \$0.0004/kWh, but the EATF law was amended in 2010.

In the past, the RETF program supported weatherization measures; appliance replacements for low-income residents; RAD extension; LIHEAP expansion and education; energy efficiency for small businesses, institutions and non profits; Energy Star appliance and lighting rebates, home energy ratings and loan promotions, public education and outreach, distributed generation and net metering; and renewable-energy demonstration projects. The program website listed at the top of this page contains a detailed history of the RETF/SETF.

This SETF is projected to eventually amount to about \$20 million a year, plus any money from the Regional Greenhouse Gas Initiative (RGGI). Specific annual funding levels are set for existing electricity programs, temporary electricity programs, existing natural gas programs, renewable energy incentives, and energy efficiency programs (administered by PEPCO). Like the RETF that it replaced, unused SETF funding will carry over to the following year rather than lapsing at the end of the fiscal year. As amended the AETF is expected to collect \$2.3 million annually for existing low-income assistance programs and \$5.2 million in 2010 for a new Residential Aid discount subsidy. Related PSC documents are available at the website listed above, or in the E-docket Section of the PSC website under Formal Case (FC) 945.

Contact:

Grace Hu
 DC Public Service Commission
 1333 H St. NW, Suite 200
 Washington, DC 20005
Phone: (202) 626-5148
Fax: (202) 393-6769
E-Mail: GHu@psc.dc.gov
Web Site: <http://www.dcpsc.org>

EXHIBIT 8: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. HAWAII: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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Hawaii

Incentives/Policies for Renewables & Efficiency

Hawaii Energy Efficiency Program

Last DSIRE Review: 09/08/2010

Program Overview:

State:	Hawaii
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Clothes Washers, Dishwasher, Refrigerators, Ceiling Fan, Water Heaters, Lighting, Lighting Controls/Sensors, Chillers, Heat pumps, Central Air conditioners, Heat recovery, Windows, Motors, Processing and Manufacturing Equipment, Custom/Others pending approval
Eligible Renewable/Other Technologies:	Solar Water Heat
Applicable Sectors:	Commercial, Industrial, Residential, Nonprofit, Fed. Government
Types:	Energy efficiency, demand side management
Total Fund:	2010 Budget (July 2010-June 2011): approximately \$20 million
Charge:	2009-2010: 1% of projected total utility revenue, including revenue tax 2011-2012: 1.5% of projected total utility revenue, including revenue tax 2013-onwards: 2% of projected total utility revenue, including revenue tax
Web Site:	http://www.hawaiienergy.com/

Authority 1:

HRS § 269-121 et seq.

Date Enacted:

6/2/2006, subsequently amended

Authority 2:

HI PUC Order, Docket 2007-0323

Date Enacted:

12/15/2008

Summary:

In June 2006, the Hawaii State Legislature enacted legislation to create a public benefits fund (PBF) for energy efficiency and demand side management. The statutory language included a provision that prevents the PBF funds from being re-appropriated by the legislature or put into the state treasury. This legislation granted authority to the Public Utilities Commission (PUC) to develop the details of the third-party administered public benefits fund. In December 2008, the PUC issued an order in Docket No. 2007-0323, outlining the structure of the PBF. In July 2009, the Hawaii Energy Efficiency Program was created, and administration of the public benefits funds programs transitioned from the utilities to

a third-party administrator.

The PBF is funded by a surcharge on utility bills that is based on a percentage of total utility revenue. The percentage of total utility revenue is used to establish a target budget for the PBF. The surcharge is set on a cents per kilowatt-hour (\$/kWh) basis to meet the target budget. The surcharge is determined by dividing the target budget (based on a percentage of total utility sales) by projected sales. Any difference in the amount collected from the surcharge and the target budget will be addressed by adjusting the following year's surcharge (by either increasing or decreasing the surcharge). There will be separate residential and commercial/industrial components, with 45% of collections from residential customers, for residential programs and 55% of collections from commercial and industrial customers, for commercial and industrial programs. The surcharge appears as a separate line item on customers' bills.

For 2009 and 2010, the PBF will have a target budget of 1% of total projected revenue, including revenue taxes. For 2011 and 2012, the PBF will have a target budget of 1.5% of total projected revenue. From 2013 onwards, the PBF will have a target budget of 2% of total projected revenue. All utilities in Hawaii, with the exception of KIUC, collect this surcharge on utility bills. Customers of HECO, HELCO, and MECO are eligible to receive incentives from the public benefits fund. Programs supported by Hawaii Energy include rebates for home appliances, industrial energy efficiency, and solar water heaters, among others.

Contact:

Derrick Sonoda
Hawaii Energy Efficiency Program
PO Box 2040
Honolulu, HI 96805
Phone: (808) 537-5577
Fax: (808) 441-6068
E-Mail: derrick.t.sonoda@saic.com
Web Site: <http://www.hawaiienergy.com>

Public Information - Hawaii PUC
Hawaii Public Utilities Commission
465 South King Street, Room 103
Honolulu, HI 96813
Phone: (808) 586-2020
E-Mail: Hawaii.PUC@hawaii.gov
Web Site: <http://www.hawaii.gov/budget/puc>

EXHIBIT 9: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. MAINE: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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Maine

Incentives/Policies for Renewables & Efficiency
Efficiency Maine

Last DSIRE Review: 05/20/2010

Program Overview:

State:	Maine
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Applicable Sectors:	Commercial, Industrial, Residential, Nonprofit, Schools, Local Government, State Government, Agricultural, Institutional
Types:	Energy efficiency
Total Fund:	\$72 million through 2009 (estimate); no fund expiration date
Charge:	Varies by utility and year (maximum charge of 1.45 mills/kWh)
Web Site:	http://www.efficiencymaine.com

Authority 1:

35-A M.R.S. § 3211-A

Date Enacted:

4/5/2002 (subsequently amended)

Expiration Date

07/01/2010

Authority 2:

CMR 65-407-380

Date Enacted:

10/1/1999 (subsequently amended)

Date Effective:

10/6/1999

Authority 3:

35-A MRSA §10101 et seq.

Date Enacted:

06/12/2009

Date Effective:

07/01/2010

Summary:

Note: The Efficiency Maine Trust Act (June 2009) establishes a new entity, the Efficiency Maine Trust, which will be responsible for Maine's energy efficiency and renewable energy programs. All of the funds in Efficiency Maine

will be transferred to Efficiency Maine Trust July 1, 2010. In addition, LD 1786 (2010) mandates that state revenue generated from energy corridor development on state-owned land would be deposited to the Efficiency Maine Trust (80%) and a new Transportation Efficiency Fund.

Maine's public benefits fund for energy efficiency was authorized by the state's electric-industry restructuring legislation, enacted in 1997. Under the initial arrangement, the administration of certain efficiency programs was divided among the State Planning Office (SPO), the state's electric utilities and the Maine Public Utilities Commission (PUC). However, general dissatisfaction by the Maine Legislature (and many other stakeholders) with the administration of the fund prompted revisions in 2002. As a result of the 2002 legislative amendments, the authority to develop energy-efficiency programs was effectively transferred from the SPO to the PUC, and the authority to implement these programs was transferred from the state's electric utilities to the PUC. The public benefits program operated by the PUC is known as Efficiency Maine.

By statute, at least 20% of funds must support energy programs for low-income residents, and at least 20% of funds must support energy programs for small business customers. The PUC assesses utilities to collect funds for energy programs and administrative costs. The maximum amount of the assessment is 0.145 cents per kilowatt-hour (1.45 mills/kWh), while the minimum amount of the assessment is 0.5% of a utility's total revenue. Utilities include the assessment in their rates; the assessment currently varies by utility. In 2003, the PUC decided to raise the assessment gradually on all utilities to the maximum assessment rate allowable. Beginning July 1, 2003, each utility was assessed at 0.6 mills/kWh or its April 2003 assessment rate, whichever was higher. In each subsequent year, the assessment will increase by 0.2 mills per year until the maximum assessment rate is reached. (Central Maine Power currently is currently paying the maximum assessment rate.)

The fund collected \$9.6 million in 2006, and the PUC projects that the fund will collect a total of approximately \$58 million through fiscal year 2010. (There is no expiration date for the fund.) In general, Efficiency Maine supports improvements in lighting efficiency, reductions in peak demand, high-performance buildings, appliance replacements for low-income residents, energy training and certification, and public education.

The *Efficiency Maine 2009 Annual Report* includes additional details on the program and the types of projects funded.

Contact:

Denis Bergeron
 Maine Public Utilities Commission
 #18 State House Station
 Augusta, ME 04333-0018
Phone: (207) 287-3349
Fax: (207) 287-1039
E-Mail: denis.bergeron@maine.gov

EXHIBIT 10: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. MASSACHUSETTS: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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Massachusetts

Incentives/Policies for Renewables & Efficiency

Energy Efficiency Fund

Last DSIRE Review: 03/23/2010

Program Overview:

State:	Massachusetts
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	CHP/Cogeneration, Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Geothermal Heat Pumps, (geothermal heating and cooling projects), Geothermal Direct-Use
Applicable Sectors:	Commercial, Industrial, Residential, Nonprofit, Schools, Utility, Agricultural, Institutional, (no specific programs for Agriculture)
Types:	Energy efficiency, low-income energy assistance
Total Fund:	\$1.09 billion collected during years 1998-2006; Three year plans for 2010-2012 expected to be at least \$1.4 billion (plans to be approved by Energy Efficiency Advisory Council and MA Dept of Public Utilities later in 2009)
Charge:	\$0.0025 per kilowatt-hour (2.5 mills/kWh); + Proceeds from Forward Capacity Market (est @ \$10 million in 2009); + Proceeds from Regional Greenhouse Gas Initiative; and possibly other sources

Authority 1:

M.G.L. ch. 25, § 19 (subsequently amended)

Date Enacted:

11/25/1997

Date Effective:

3/1/1998

Authority 2:

M.G.L. ch. 25A § 11G

Authority 3:

DPU Order on Electric Three-Year Energy Efficiency Plans (2010-2012)

Date Enacted:

01/28/2010

Authority 4:

DPU Order on Gas Three-Year Energy Efficiency Plans (2010-2012)

Date Enacted:

01/28/2010

Summary:

Massachusetts's 1997 electric-utility restructuring legislation created separate public benefits funds to promote renewable energy and energy efficiency for all customer classes. Both funds were significantly revised by legislation enacted in July 2008 (S.B. 2768). The 2008 Green Communities Act directs the electric and gas program administrators to "first acquire all available energy efficiency that is cost effective or less than the cost of supply."

The energy efficiency fund is authorized to support energy efficiency programs, including demand-side management (DSM) programs and low-income energy programs. It is funded by several sources: a non-bypassable surcharge of surcharge is \$0.0025 per kilowatt-hour (2.5 mills/kWh), imposed on customers of all investor-owned electric utilities in Massachusetts; amounts generated under the Forward Capacity Market program administered by ISO-NE; cap-and-trade pollution-control programs, including the Regional Greenhouse Gas Initiative (RGGI) and the NOx Allowance Trading Program; and other sources approved by the Massachusetts Department of Energy Resources (DOER), the Energy Efficiency Advisory Council and the Department of Public Utilities (DPU). The energy efficiency surcharge does not have an expiration date.

Efficiency programs are administered by electric utilities and municipal aggregators, with approval by a state-appointed Energy Efficiency Advisory Council consisting of a broad group of stakeholders and the DPU. DOER is responsible for program oversight and evaluation. The [Energy Efficiency Advisory Council's website](#) includes minutes from meetings and information about upcoming meetings.

The Energy Efficiency Advisory Council and the DPU are also authorized to approve and fund natural gas energy efficiency programs, including DSM programs and low-income energy programs, proposed by natural gas distribution companies. Energy efficiency activities eligible for funding through these programs include combined heat and power (CHP). Gas efficiency programs are administered by gas distribution companies.

Electric and gas energy efficiency program funds are required to be allocated to customer classes, including the low-income residential subclass, in proportion to their contributions to those funds; provided, that at least 10% of the amount expended for electric energy efficiency programs and at least 20% of the amount expended for gas energy efficiency programs must be spent on comprehensive low-income residential DSM and education programs. The low-income residential DSM and education programs are to be implemented through the state's low-income weatherization and fuel assistance program network.

In October 2009, the Energy Efficiency Advisory Council approved the 2010-2012 Three-Year Energy Efficiency Plans for electric and gas utilities in the state after approximately 25 meetings held over the span of a year, with broad stakeholder input. And, later in January 2010, the DPU formally approved the plans. The DOER provides a [summary](#) of these plans.

Contact:

Mike Sherman
 Massachusetts Department of Energy Resources (DOER)
 100 Cambridge St., Suite 1020
 Boston, MA 02114
Phone: (617) 626-7387 Ext.40187
Fax: (617) 727-0030
E-Mail: Mike.Sherman@state.ma.us
Web Site: <http://www.Mass.Gov/DOER>

EXHIBIT 11: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. MINNESOTA: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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Minnesota

Incentives/Policies for Renewables & Efficiency

Renewable Development Fund (RDF)

Last DSIRE Review: 03/17/2010

Program Overview:

State:	Minnesota
Incentive Type:	Public Benefits Fund
Eligible Renewable/Other Technologies:	Photovoltaics, Wind, Biomass, Hydroelectric, CHP/Cogeneration, Anaerobic Digestion, Renewable Fuels, Fuel Cells using Renewable Fuels
Applicable Sectors:	Commercial, Industrial, Residential, General Public/Consumer, Nonprofit, Schools, Local Government, Utility, State Government, Tribal Government, Fed. Government, Agricultural, Institutional
Types:	Renewables
Total Fund:	\$19.5 million annually (beginning in 2008)
Web Site:	http://www.xcelenergy.com/Minnesota/Company/E...

Authority 1:

Minn. Stat. § 116C.779

Date Enacted:

1994 (subsequently amended)

Date Effective:

1999

Expiration Date

None

Summary:

Xcel Energy's Renewable Development Fund (RDF) was created in 1999 pursuant to the 1994 Radioactive Waste Management Facility Authorization Law (Minn. Stat. § 116C.779). Originally, Xcel Energy was required to donate to the fund \$500,000 annually for each dry cask containing spent nuclear fuel being stored at the Prairie Island nuclear power plant, amounting to about \$9 million annually. Subsequent legislation, enacted in May 2003, extended nuclear-waste storage at Xcel Energy's Prairie Island plant and increased the amount Xcel must pay toward the development of renewable-energy resources to \$16 million annually for as long as the utility's Prairie Island nuclear plant is in operation and \$7.5 million for each year the plant is not in operation.

In May 2007, S.F. 2096 amended Minn. Stat. § 116C.779 yet again after Xcel petitioned the Minnesota Public Utilities Commission (PUC) to begin dry cask storage at Monticello, a second nuclear power plant. Under this legislation Xcel is required to contribute \$350,000 towards the fund for each dry cask storage device containing spent fuel at the Monticello plant for as long as the plant remains in operation and \$5.25 million annually for each year the plant is not in operation. Xcel's petition for dry cask storage at Monticello (which continues to operate) has been approved according to the following schedule:

- 2008: 10 casks (+ \$3.5 million)
- 2012: 10 casks (+ \$3.5 million)
- 2016: 10 casks (+ \$3.5 million)

Thus, Xcel's annual contribution to the RDF was increased from \$16 million to \$19.5 million during 2008 and is scheduled to increase again in 2012 and 2016.

Through January 1, 2021, up to \$10.9 million annually must be allocated from available funds in the account to support renewable-energy production incentives. Of this amount, \$9.4 million supports production incentives for electricity generated by wind-energy systems. The balance of the \$10.9 million sum -- up to \$1.5 million annually -- may be used for production incentives for on-farm biogas recovery facilities, hydroelectric facilities, or for production incentives for other renewables. Unspent portions of this allocation from any calendar year may be used for other purposes. Separately, as a result of 2009 legislation a total of \$20 million (\$5 million annually from July 1, 2009 through July 1, 2012) must be must be allocated to fund a grant for the University of Minnesota's Initiative for Renewable Energy and the Environment (IREE). The IREE in turn is required to use this money for a variety of activities, including environmentally sound renewable energy production and hydrogen production; the development of energy conservation, efficient energy utilization, and energy storage technologies; and analysis of policy options for facilitating the adoption of low-carbon renewable energy technologies.

The RDF is administered by the Renewable Development Board, which consists of two representatives from Xcel Energy, two representatives from Minnesota's environmental community, one representative from the Prairie Island Indian Community, and two representatives of Xcel Energy's ratepayers—one representing commercial/industrial customers and one representing residential customers. Funds in the account may only be used for the development of renewable-energy resources. Preference must be given to development of renewable-energy projects located in Minnesota, but a small number of projects located in other states have been funded. Renewable-energy technologies eligible for funding typically include wind, biomass, solar, hydro and fuel cells. Funding is generally split between new development projects that result in the production of renewable energy, and research and development. Wind energy production projects were not eligible for funding under the third and most recent grant cycle and will likely remain so under future cycles. Expenditures from the RDF may only be made after approval by order of the PUC upon a petition by the public utility.

In 2001, the RDF selected a total of 19 research projects to receive nearly \$16 million in funding. These awards supported commercial technology, experimental technology, and research and development. In 2005, 29 projects totaling nearly \$37 million were selected under the second round of funding. These awards were split between research and development of new renewable-energy sources and energy production. Projects awards supported wind energy, biomass energy, solar energy, hydropower, biofuels and a project involving coal gasification.

In May 2007 Xcel announced the third round of funding and 22 projects totaling \$22.6 million were approved by the PUC in April 2008. See the program website for a list of projects selected during the third round. The funding schedule for the fourth round has not yet been determined.

Contact:

Timothy J. Edman
 Xcel Energy
 414 Nicollet Mall
 Minneapolis, MN 55401-1993
 Phone: (800) 354-3060
 Fax: (612) 330-7601
 E-Mail: timothy.j.edman@xcelenergy.com
 Web Site: <http://www.xcelenergy.com>

EXHIBIT 12: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. MONTANA: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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Montana

Incentives/Policies for Renewables & Efficiency

Universal System Benefits Program

Last DSIRE Review: 03/16/2010

Program Overview:

State:	Montana
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Passive Solar Space Heat, Solar Water Heat, Solar Space Heat, Solar Thermal Electric, Solar Thermal Process Heat, Photovoltaics, Wind, Geothermal Electric
Applicable Sectors:	Commercial, Industrial, Residential, General Public/Consumer, Utility, Institutional
Types:	Efficiency, conservation, renewable energy, low-income energy assistance, R&D
Total Fund:	Approximately \$9 million annually
Charge:	Surcharge rate based on 2.4% of electric utilities' 1995 revenue
Web Site:	http://www.deq.mt.gov/Energy/renewable/taxinc...

Authority 1:

MCA 69-8-402

Date Enacted:

1997

Date Effective:

1/1/1999

Authority 2:

MONT. ADMIN. R. 42.29.101 et seq.

Date Enacted:

1999, subsequently amended

Summary:

Montana established the Universal System Benefits Program (USBP) in 1997 as part of its restructuring legislation. The USBP supports cost-effective energy conservation, low-income customer weatherization, renewable-energy projects and applications, research and development programs related to energy conservation and renewables, market transformation designed to encourage competitive markets for public purpose programs, and low-income energy assistance.

Beginning January 1, 1999, all electric utilities -- including electric cooperatives -- must contribute revenue generated from a surcharge on customers' electricity use. In 1997, the surcharge was set through electricity restructuring legislation and was based on 2.4% of electric utilities' 1995 revenues. This surcharge is determined by the Montana Public Service

Commission (PSC) and by individual electric cooperatives. However, the surcharge rate has not been adjusted since that time, so annual collections have increased slightly as utility loads have increased over time. In 2009, approximately \$10.3 million was collected from utilities regulated by the PSC via a non-bypassable surcharge on customers' electricity use. The amount collected annually varies, depending on weather and economic conditions. Utilities may spend all or a portion of the funds on internal programs, or may opt to contract or fund eligible programs externally. Large-scale electricity users with a load exceeding one megawatt (MW) may choose to fund qualifying internal energy programs with monies that otherwise would be remitted to the USBP.

The USBP was set to expire December 31, 2009, but H.B. 27 removed the expiration date and extended the program indefinitely.

Contact:

Will Rosquist
Montana Public Service Commission
1701 Prospect Avenue
Vista Building
Helena, MT 59620-2601
Phone: (406) 444-6359
Phone 2: (406) 444-6199
Fax: (406) 444-7618
E-Mail: wrosquist@mt.gov
Web Site: <http://www.psc.state.mt.us>

EXHIBIT 13: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. NEW HAMPSHIRE: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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New Hampshire

Incentives/Policies for Renewables & Efficiency

System Benefits Charge

Last DSIRE Review: 06/29/2010

Program Overview:

State:	New Hampshire
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Applicable Sectors:	Commercial, Industrial, Residential, Schools, Utility
Types:	Energy efficiency, low-income energy assistance
Total Fund:	Approximately \$19 million collected annually
Charge:	1.8 mills per kilowatt-hour (\$0.0018/kWh)
Web Site:	http://nh.gov/oep/programs/energy/resources.h...

Authority 1:

New Hampshire Statutes § 374-F:3 et seq.

Date Enacted:

1996

Summary:

New Hampshire's 1996 electric-industry restructuring legislation authorized the creation of a system benefits charge (SBC) to support energy-efficiency programs and energy programs for low-income residents. The efficiency fund, which took effect in 2002, is financed by a non-bypassable surcharge on electric customers' bills. The efficiency surcharge is 1.8 mills per kilowatt-hour and a separate surcharge that supports low-income energy programs was raised from 1.2 mills per kWh to 1.5 mills per kWh in September 2008. As a result, approximately \$15 million will be collected annually to support the efficiency fund. The New Hampshire Public Utilities Commission (PUC) has approved several "core" energy-efficiency programs for SBC funding. All efficiency programs are administered by the state's utilities, with oversight from the PUC.

Commercial programs funded by the SBC support new construction and major renovations, lighting upgrades, occupancy sensors, controls, air conditioning improvements, programmable thermostats, efficient motors, variable-frequency drives, energy-management systems, LED traffic lights, and custom projects. Residential programs funded by the SBC support Energy Star lighting and appliances, Energy Star new home construction, insulation, thermostats and other efficiency measures. SBC programs for qualified low-income residents provide funding for insulation, thermostats, lighting upgrades and efficient refrigerators.

Contact:

NH Public Utilities Commission Info (NH PUC)

New Hampshire Public Utilities Commission
Sustainable Energy Division
21 South Fruit Street
Suite 10
Concord, NH 03301
Phone: (603) 271-2431
Fax: (603) 271-3868
Web Site: <http://www.puc.nh.gov>

EXHIBIT 14: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. NEW JERSEY: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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New Jersey

Incentives/Policies for Renewables & Efficiency

Societal Benefits Charge

Last DSIRE Review: 04/02/2010

Program Overview:

State:	New Jersey
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Solar Water Heat, Solar Thermal Electric, Photovoltaics, Landfill Gas, Wind, Biomass, Hydroelectric, Geothermal Electric, CHP/Cogeneration, Anaerobic Digestion, Tidal Energy, Wave Energy, Fuel Cells using Renewable Fuels
Applicable Sectors:	Commercial, Industrial, Residential, General Public/Consumer, Nonprofit, Schools, Local Government, Utility, State Government, Fed. Government, Agricultural, Institutional
Types:	Energy efficiency, renewables, low-income energy assistance
Total Fund:	\$2.439 billion (2001-2012)
Charge:	Per-kWh surcharge (varies annually by funding target)
Web Site:	http://www.njcleanenergy.com/main/public-repo...

Authority 1:

N.J. Stat. § 48:3-60

Date Enacted:

02/09/1999

Summary:

New Jersey's 1999 electric-utility restructuring legislation created a "societal benefits charge" (SBC) to support investments in energy efficiency and "Class I" renewable energy. The SBC funds New Jersey's Clean Energy Program (NJCEP), a statewide initiative administered by the New Jersey Board of Public Utilities (BPU). The NJCEP provides technical assistance, financial assistance, information and education for all classes of ratepayers. NJCEP energy-efficiency programs and renewable-energy programs were initially managed and implemented by New Jersey's seven investor-owned electric public utilities and gas public utilities, but on April 1, 2007 management was turned over to third-party program managers Honeywell Utility Solutions and TRC Energy Solutions. The BPU will continue to act as the administrator of the NJCEP, while contracted program managers will be responsible for managing and implementing these programs. The New Jersey Office of Clean Energy (OCE) and market managers submit annual program plans for approval by the BPU (see website for details).

"Class I" renewable energy is defined as electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, and methane gas from landfills or a biomass

facility, provided that the biomass is cultivated and harvested in a sustainable manner. NJCEP funding for renewables includes the state's much publicized customer-sited rebate programs, as well as other initiatives such as offshore wind, large grid-connected renewables, and clean energy systems manufacturing. For energy-efficiency projects, the NJCEP has provided funding for new construction, building retrofits, HVAC systems, Energy Star products (including air conditioners, appliances and lighting), combined heat and power (CHP), energy audits, and energy-efficiency projects for low-income residents.

The SBC is collected as a non-bypassable charge imposed on all customers of New Jersey's seven investor-owned electric public utilities and gas public utilities. The BPU determines the amount that will be collected. A total of \$482 million was collected during 2001-2004 and a total of \$745 million was collected from 2005-2008. In September 2008 the BPU approved a 2009-2012 budget of \$1.213 billion, with approximately 80% (\$950 million) of the budget devoted to energy efficiency programs and 20% (\$243 million) for renewable energy programs. Any unused funds from previous years are carried into the next year's budget.

It is important to note that these budget numbers do not account for a variety of factors that may have small or large impacts on the actual annual budget. Such factors include: <UL

- Interest income earned by the fund
- Budget re-allocations between the energy efficiency and renewable energy
- Alternative compliance payments (ACPs) made under the state renewable portfolio standard, which by law must be used to support renewable energy projects through the NJCEP. For instance, solar ACPs (or SACPs) totaling \$38.9 million were deposited into the fund for RPS shortfalls during the June 2008 - May 2009 compliance year.
- Transfers of money out of the fund to serve other state purposes. Examples of this include a \$40 million transfer made in June 2009 as part of the state's FY2010 appropriations act, and a further transfer of \$158 million from the clean energy fund into a state budget reserve fund in February 2010 (Executive Order 14 of 2010). The Revised 2010 Clean Energy Program Budget contains significant program and funding revisions resulting from this transfer.

These and other budget/funding details are available in various market manager and BPU documents on the program web site listed at the top of this page. Further information on historical activities is available in form of quarterly and annual reports.

Contact:

Mona Mosser

New Jersey Board of Public Utilities
State Energy Program Manager, Office of Clean Energy
2 Gateway Center
Newark, NJ 07102
Phone: (973) 648-2891
E-Mail: mona.mosser@bpu.state.nj.us
Web Site: <http://www.bpu.state.nj.us>

Benjamin Scott Hunter

New Jersey Board of Public Utilities
Renewable Energy Program Administrator, Office of Clean Energy
2 Gateway Center
Newark, NJ 07102
Phone: (609) 777-3300
E-Mail: benjamin.hunter@bpu.state.nj.us
Web Site: <http://www.bpu.state.nj.us>

Anne Marie McShea

New Jersey Board of Public Utilities
Office of Clean Energy
2 Gateway Center
Newark, NJ 07102
Phone: (609) 777-3306
E-Mail: Anne.McShea@bpu.state.nj.us
Web Site: <http://www.bpu.state.nj.us>

EXHIBIT 15: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. NEW MEXICO: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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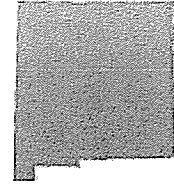
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New Mexico

Incentives/Policies for Renewables & Efficiency

Efficient Use of Energy Act

Last DSIRE Review: 12/01/2009

Program Overview:

State:	New Mexico
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Applicable Sectors:	Commercial, Industrial, Residential
Charge:	Limit: \$75,000/yr per customer

Authority 1:

N.M. Stat. § 62-17-1 et seq.

Summary:

The Efficient Use of Energy Act of 2005 allowed public electric and natural gas utilities to implement cost-effective energy-reduction programs. The programs may be funded through a tariff rider for energy-efficiency and load management programs. The charges on the consumer cannot exceed the commission's approved tariff for that customer's bill or \$75,000 per year. The Act also provides for monitoring, verification, and periodic reporting by the utility on its energy efficiency expenditures and overall program effectiveness. Public utilities must obtain Commission approval of energy efficiency and load management programs before they are implemented.

PNM is the only investor-owned utility that has received approval of energy efficiency programs for its gas service. PNM also received approval for its electric energy efficiency programs and program cost tariff riders approved in Case No. 07-00053-UT on August 28, 2007.

A distribution cooperative may collect from its customers a renewable energy and conservation fee of no more than one percent of the customer's bill. Money collected through the renewable energy and conservation fee must be segregated in a separate renewable energy and conservation account from other distribution cooperative funds and can only be expended on programs or projects to promote the use of renewable energy, load management or energy efficiency. At this time only one cooperative, Roosevelt County Electric Cooperative, has imposed a renewable energy and conservation fee upon its member/customers.

Electric cooperatives must provide written submission of their energy-efficiency programs to the Commission, but approval for such programs shall reside with the governing body of each cooperative utility.

Background

In 2007, SB 418 § 14 removed a requirement that consumer charges cannot exceed 1.5% of a consumer's energy bill and empowered the Commission to establish a new cap.

Contact:

Jeff Primm
New Mexico Public Regulation Commission
PO Box 1269
1120 Paseo de Peralta
Santa Fe, NM 87504
Phone: (505) 827-6958
E-Mail: jeff.primm@state.nm.us
Web Site: <http://www.nmprc.state.nm.us/>

EXHIBIT 16: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. NEW YORK: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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New York

Incentives/Policies for Renewables & Efficiency

System Benefits Charge

Last DSIRE Review: 08/18/2010

Program Overview:

State:	New York
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Solar Water Heat, Solar Space Heat, Solar Thermal Electric, Photovoltaics, Landfill Gas, Wind, Biomass, Hydroelectric, Geothermal Electric, Fuel Cells, CHP/Cogeneration, Daylighting, Anaerobic Digestion, Tidal Energy, Wave Energy, Ocean Thermal, Ethanol, Methanol, Biodiesel
Applicable Sectors:	Commercial, Industrial, Residential, Nonprofit, Schools, Local Government, Utility, State Government, Fed. Government, Multi-Family Residential, Low-Income Residential, Institutional
Types:	Energy efficiency, R&D (includes renewables), low-income assistance
Total Fund:	\$1.89 billion (1998-2011)
Charge:	Each utility must collect a sum equal to 1.42% of its 2004 revenue and submit this sum to NYSEDA annually. The percentage may be adjusted slightly each year based on updated utility revenue.
Web Site:	http://www.dps.state.ny.us/sbc.htm

Authority 1:

New York PSC Opinion No. 96-12 (Cases 94-E-0952 et al.)

Date Enacted:

05/20/1996

Date Effective:

05/20/1996

Authority 2:

New York PSC Order (Case 94-E-0952)

Date Enacted:

01/26/2001

Date Effective:

01/26/2001

Authority 3:

New York PSC Order (Case 05-M-0090)

Date Enacted:

12/21/2005

Date Effective:

12/21/2005

Summary:

New York's system benefits charge (SBC), established in 1996 by the New York Public Service Commission (PSC), supports energy efficiency, education and outreach, research and development, and low-income energy assistance. To support the SBC program, the state's six investor-owned electric utilities collect funds from customers through a surcharge on customers' bills. Each year from 2006-2011, each utility must collect and remit to the New York State Energy Research and Development Authority (NYSERDA) a sum equal to 1.42% of the utility's 2004 revenue. This percentage may be adjusted slightly each year based on updated utility revenue.

The SBC program is administered by NYSEDA and funds the New York Energy \$mart Program and other programs to improve the state's transmission and distribution infrastructure. The program goals include improving system-wide reliability and increasing peak-electricity reductions through end-user efficiency actions; improving energy efficiency and access to energy options for under-served customers; reducing the environmental impacts of energy production and use; and facilitating competition in electricity markets to benefit end-users. Individual program solicitations can be found by visiting the [Energy \\$mart](#) web page, as well as the [NYSEDA Current Funding Opportunities](#) web page. Only customers that pay the SBC are eligible for assistance through the programs it funds.*

In December 2005, the PSC extended the SBC for an additional five years -- through June 30, 2011 -- and increased annual funding from approximately \$150 million to \$175 million. Under this order, of the \$896 million (includes expected interest earnings) to be collected during this five-year period, \$427 million is allocated to peak load, energy efficiency, and outreach and education; \$182 million is allocated to R&D (including renewables); and \$190 million is allocated to low-income energy assistance. The balance of fund expenditures will support administration, evaluation and fees. Click [here](#) for a copy of the SBC III Operating Plan.

The DPS has the authority to adjust program priorities and to shift funds to address emerging energy challenges. Current Energy \$mart budget figures, such as those found in the [2009 Evaluation Report](#), reflect budget re-allocations as well as significant carryover of unspent funds from earlier years. Total funding amounts to \$1.89 billion during the 1998-2011 period as detailed in this report.

Although SBC funds may be used to support renewable-energy infrastructure, the program no longer provides financial incentives for most renewable-energy systems, most of which are instead eligible for funding under the Customer-Sited Tier of the state [renewable portfolio standard \(RPS\)](#). However, SBC funding may be available for technologies that are ineligible for RPS funding, or for efforts that support training, education, or market development of RPS-eligible technologies.

Background

Initial funding totaled \$234 million from 1998-2001 for energy-efficiency programs, R&D projects (including renewables), low-income energy assistance (including weatherization), and environmental disclosure activities. In January 2001, funding was expanded to \$750 million total through June 30, 2006. A full policy history can be found on the PSC website listed at the top of this page.

**Customers of the Long Island Power Authority (LIPA), the New York Power Authority (NYPA), municipal utilities, and electric cooperatives do not qualify for incentives funded by the SBC. The NYPA and LIPA both offer separate energy conservation programs for their customers.*

Contact:

John D'Aloia

New York State Department of Public Service

Agency Building 3, Empire State Plaza

Albany, NY 12223

Phone: (518) 486-5210

E-Mail: john_d'aloia@dps.state.ny.us

Web Site: <http://www.dps.state.ny.us>

EXHIBIT 17: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. OHIO: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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Ohio

Incentives/Policies for Renewables & Efficiency

Advanced Energy Fund

Last DSIRE Review: 10/07/2010

Program Overview:

State:	Ohio
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Solar Water Heat, Solar Space Heat, Solar Thermal Electric, Photovoltaics, Landfill Gas, Wind, Biomass, Hydroelectric, Geothermal Electric, Fuel Cells, Municipal Solid Waste, CHP/Cogeneration, Microturbines
Applicable Sectors:	Commercial, Industrial, Residential, Utility, Institutional
Types:	Renewables, energy efficiency, distributed energy
Total Fund:	\$100 million over 10 years (maximum)
Charge:	Varies by utility (fund authorized to collect \$15 million per year from 2001-05 and \$5 million per year from 2006-11)
Web Site:	http://development.ohio.gov/Energy/Incentives...

Authority 1:

ORC 4928.61 et seq.

Date Effective:

10/05/1999

Expiration Date

12/31/2010

Summary:

Ohio's Advanced Energy Fund* was originally authorized by the state's 1999 electric restructuring legislation. The Fund supports the Advanced Energy Program, which at different times has provided grants for renewable energy and energy efficiency projects to different economic sectors. Grant funds are awarded through periodic Notices of Funding Availability (NOFAs) which may each focus on specific technologies or economic sectors.

The Fund is administered by the Ohio Department of Development's Office of Energy Resources Division and replenished through a uniform fee on the electric bills of customers of the state's four investor-owned utilities (American Electric Power, Dayton Power & Light, Duke Energy, and FirstEnergy). The fee amount is determined by dividing an aggregate revenue target for a given year -- as determined by the Ohio Department of Development (ODOD) -- by the number of customers of electric distribution utilities in Ohio during the previous year. The maximum aggregate revenue target for each year through 2005 was \$15 million; the maximum target for each year after 2005 is \$5 million. Fee collections began January 1, 2006, and will end January 1, 2011, or when the fund reaches \$100 million, whichever is

first.

Additional income may accrue to the Advanced Energy Fund from alternative compliance payments (ACPs) associated with Ohio's newly created Alternative Energy Resource Standard, enacted in July 2008.

Ohio's 1999 restructuring legislation also created the Public Benefits Advisory Board, a multi-stakeholder panel that assists the ODOD in administering the Fund, and the Universal Service Board. The ODOD collaborates with the Public Utilities Commission of Ohio to design and develop energy programs. Incentives are available to residents, low-income housing developers, businesses, industry, local governments, schools, nonprofits and farms. Participation in the Fund by electric cooperatives and municipal utilities is voluntary. Because no electric cooperatives or municipal utilities are participating, customers of these utilities are not eligible for Fund incentives. For information on current opportunities please consult the program website.

**This fund was previously known as the Energy Efficiency Revolving Loan Fund, but the name was changed and its programs were restructured in August 2007.*

Contact:

Judy Pacifico
Ohio Department of Development
Office of Energy Efficiency
77 South High Street, 26th Floor
PO Box 1001
Columbus, OH 43216-1001
Phone: (614) 387-2732
Phone 2: (800) 848-1300
E-Mail: aef@development.ohio.gov
Web Site: <http://development.ohio.gov/Energy/default.htm>

EXHIBIT 18: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. OREGON: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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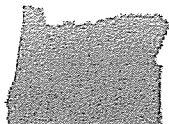
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Oregon

Incentives/Policies for Renewables & Efficiency

Energy Trust of Oregon

Last DSIRE Review: 08/03/2010

Program Overview:

State:	Oregon
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Clothes Washers, Water Heaters, Lighting, Furnaces, Boilers, Heat pumps, CHP/Cogeneration, Heat recovery, Windows, Processing and Manufacturing Equipment, Comprehensive Measures/Whole Building
Eligible Renewable/Other Technologies:	Solar Water Heat, Solar Space Heat, Solar Thermal Electric, Photovoltaics, Wind, Biomass, Hydroelectric, Geothermal Electric, Fuel Cells using Renewable Fuels, Geothermal Direct-Use
Applicable Sectors:	Commercial, Industrial, Residential, Nonprofit, Schools, Local Government, Utility, State Government, Multi-Family Residential, Agricultural, Institutional
Types:	Renewables, energy efficiency, low-income assistance
Total Fund:	Annual funding from public purpose surcharge, based on 2010 budget: \$13.8 million for renewables, \$71.3 million for energy efficiency
Charge:	3% charge for Pacific Power and Portland General Electric customers, of which 73.8% goes to Energy Trust; 1.25% charge for NW Natural Gas customers; and 1.5% charge for Cascade Natural Gas customers
Web Site:	http://energytrust.org/about/who-we-are/

Authority 1:

ORS 757.612 et seq.

Expiration Date

1/1/2026

Summary:

Oregon's 1999 electric-utility restructuring legislation ([SB 1149](#)) required Pacific Power and Portland General Electric (PGE) to collect a 3% public-purpose charge from their customers to support renewable energy and energy efficiency projects through January 1, 2026. The Oregon Public Utility Commission (OPUC) authorized the Energy Trust of Oregon, an independent non-profit organization, to administer these programs beginning in 2002.

Of the funds collected by the electric utilities, 56.7% must be allocated towards energy efficiency programs and 17.1% to renewables. The remaining funds support low-income housing energy assistance and K-12 school energy-conservation efforts. Click [here](#) for an overview of all of the Energy Trust's programs.

Oregon's renewable portfolio standard legislation (SB 838), enacted in June 2007, established a goal that by 2025 at least 8% of Oregon's retail electrical load comes from small-scale renewable energy projects with a capacity of 20 megawatts (MW) or less. To support this goal, the legislation modified the public purpose charge for renewables to require that funding be used to support only smaller projects of 20 MW or less. Furthermore, the sunset date on the original 10-year public purpose charge was extended through 2025.

In addition to its work under the 1999 energy restructuring law, the Energy Trust administers gas conservation programs for residential and commercial customers of Northwest Natural (starting in 2003) and Cascade Natural Gas Corporation (starting July 2006). Energy Trust offered select programs for residential customers of Avista Corporation in Oregon starting in September 2006, but no longer delivers energy efficiency programs to Avista.

The Energy Trust's renewable energy programs include financial incentives for small-scale and utility-scale projects that generate energy from solar, wind, hydro, biomass and geothermal resources. Efficiency programs include incentives for improvements to residential, commercial and new buildings, retrofit, appliances and manufacturing processes. The Energy Trust accepts applications for funding in response to specific programs, as well as through an open solicitation process. At least 80% of the energy conservation expenditures are concentrated in the service territory of the utility where the funds were collected.

Visit the program web site above for the latest Energy Trust Annual Report.

Contact:

Peter West
 The Energy Trust of Oregon
 851 SW Sixth Ave., Suite 1200
 Portland, OR 97204
 Phone: (503) 493-8888 Ext.x209
 Fax: (503) 546-6862
 E-Mail: info@energytrust.org
 Web Site: <http://www.energytrust.org>

**EXHIBIT 19: DATABASE OF STATE INCENTIVES FOR RENEWABLES
 AND EFFICIENCY. 2010. PENNSYLVANIA: INCENTIVE/ POLICIES FOR
 RENEWABLES & EFFICIENCY**



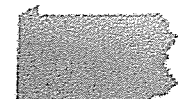
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North Carolina Solar Center



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Pennsylvania

Incentives/Policies for Renewables & Efficiency

Public Benefits Programs

Last DSIRE Review: 04/18/2010

Program Overview:

State:	Pennsylvania
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Solar Water Heat, Solar Space Heat, Solar Thermal Electric, Solar Thermal Process Heat, Photovoltaics, Landfill Gas, Wind, Biomass, Hydroelectric, Fuel Cells, Geothermal Heat Pumps, Municipal Solid Waste
Applicable Sectors:	Commercial, Industrial, Residential, General Public/Consumer, Utility, Institutional
Types:	Renewables and efficiency
Total Fund:	Varies by fund; approximately \$92 million in collective revenue through 2009
Charge:	Varies by utility territory
Web Site:	http://www.puc.state.pa.us/electric/electric...

Summary:

Although Pennsylvania's December 1996 electricity restructuring law did not establish a clean-energy fund, four renewable and sustainable-energy funding programs were subsequently created through individual settlements with the state's five major distribution utilities: Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), PECO Energy (PECO), PP&L (PPL), and Allegheny Power/West Penn Power Company (WPP). These utilities created individual "Sustainable Energy Funds" with the goals of promoting (1) the development and use of renewable energy and advanced clean-energy technologies, (2) energy conservation and efficiency, and (3) sustainable-energy businesses. Each utility has established an oversight board and designated a fund administrator.

The four Sustainable Energy Funds (SEF) in Pennsylvania are:

- The Metropolitan Edison Region SEF is administered by the Berks County Community Foundation. This is a companion fund to the Penelec Region SEF, administered by the Community Foundation for the Alleghenies.
- The Sustainable Development Fund, in Southeastern Pennsylvania PECO's service territory, is administered by The Reinvestment Fund.
- The West Penn Power SEF is administered by The Energy Institute of Penn State University, in partnership with Energetics, Inc.
- The Sustainable Energy Fund of Central Eastern Pennsylvania, in PPL's service territory, is administered by a nonprofit organization.

Under terms of the settlements, approximately \$55 million was collected through the utilities' distribution rates to promote the development of sustainable and renewable energy. The Sustainable Development Fund (in PECO's territory) received

an additional \$18.5 million in funding over a five-year period as a result of the PECO/Unicom merger. Likewise, the Met-Ed and Penelec funds received an additional \$5 million (\$2.5 million each) in funding due to the merger of GPU Energy and FirstEnergy. The PUC agreed to continue funding the PPL SEF through December 31, 2006. The per-kilowatt-hour surcharge included in the utility's distribution rates for 2005 and 2006 was \$0.0001 and \$0.00005 per kilowatt-hour, respectively.

As of 2009 the West Penn fund was the only fund still receiving revenue. In 2009 the annual income was equivalent to a \$0.0001/kWh charge on utility distribution sales. However, West Penn is not permitted to seek recovery of the expense through rate making so the cost is essentially borne by the utility as opposed to its ratepayers. The annual payment amounts to approximately \$2 million per year and began in 2006. Without the expectation of significant additional revenue, the collective funds are making efforts to transition towards becoming revolving loan and investment funds in order to sustain their capital.

The Pennsylvania Sustainable Energy Board was formed in 1999 to enhance communications among the four funds and state agencies. The board includes representatives from the PUC; the Pennsylvania Department of Environmental Protection; the Pennsylvania Department of Community and Economic Development; the Pennsylvania Office of Consumer Advocate; the Pennsylvania Environmental Council; and each regional board. The board's annual reports provide details on the projects and activities supported by each of the four funds. In addition, the Pennsylvania Sustainable Energy Board has developed uniform guidelines for the business practices of the sustainable energy funds. The PUC approved these guidelines in 2007. See the program web site for details on fund activities and the guidelines.

See DSIRE's summaries of financial incentives in Pennsylvania for more information about assistance offerings available from the four funds.

Contact:

Scott Gebhardt
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: (717) 425-7584
Fax: (717) 787-2545
E-Mail: ra-aeps@state.pa.us
Web Site: <http://www.puc.state.pa.us/>

EXHIBIT 20: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. RHODE ISLAND: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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Rhode Island

Incentives/Policies for Renewables & Efficiency

Rhode Island Renewable Energy Fund (RIREF)

Last DSIRE Review: 09/21/2010

Program Overview:

State:	Rhode Island
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Passive Solar Space Heat, Solar Water Heat, Solar Space Heat, Solar Thermal Electric, Solar Thermal Process Heat, Photovoltaics, Landfill Gas, Wind, Biomass, Hydroelectric, Geothermal Electric, Co-firing, Anaerobic Digestion, Tidal Energy, Wave Energy, Ocean Thermal, Fuel Cells using Renewable Fuels
Applicable Sectors:	Commercial, Industrial, Residential, Utility, Institutional
Types:	Demand-side management (DSM), renewables, low-income assistance
Charge:	\$0.0023 per kWh (2.3 mills per kWh)
Web Site:	http://www.riedc.com/business-services/renewa...

Authority 1:

R.I. Gen. Laws § 39-2-1.2

Date Enacted:

8/7/1996

Date Effective:

1/1/1997

Authority 2:

RIEDC Rules and Regulations for the Renewable Energy Development Fund

Date Enacted:

12/15/2008

Date Effective:

11/24/2008

Summary:

Rhode Island's Public Utilities Restructuring Act of 1996 created the nation's first public benefits fund (PBF) for renewable energy and demand-side management (DSM). The Rhode Island Renewable Energy Fund (RIREF)'s renewable-energy component is administered by the Rhode Island Economic Development Corporation (RIEDC), and the fund's demand-side management (DSM) programs are administered by the state's electric distribution companies, subject to review by the Rhode Island Public Utilities Commission (PUC).

Rhode Island's PBF is supported by a surcharge on electric customers' bills. Initially, the surcharge for renewables and

DSM was set at \$0.0023 per kilowatt-hour (2.3 mills per kWh). The law was amended in 2002 by establishing separate surcharges for renewables and DSM. The adjusted surcharge for renewables -- set at \$0.0003 (0.3 mills) per kWh -- and the adjusted surcharge for DSM programs -- set at \$0.002 (2.0 mills) per kWh -- will remain in effect for a 10-year period, beginning January 1, 2003. The annual budget for the renewables fund during this 10-year period is approximately \$2.4 million.

Legislation (H.B. 7806) enacted in July 2008 authorized the RIEDC to integrate and coordinate the state's renewable-energy policies more effectively. This law requires the RIEDC to create a new program, the Municipal Renewable Energy Investment Program, using the lesser of 50% or \$1 million collected annually from the 0.3 mill per kWh surcharge for renewable-energy programs. This program will provide grants of up to \$500,000 per project for municipal renewable-energy projects. The RIEDC must also create a second new grant program, the Nonprofit Affordable Housing Renewable Energy Investment Program, using the lesser of 10% or \$200,000 collected annually from the 0.3 mill per kWh surcharge for renewable-energy programs. In addition, the rules established by RIEDC provide funding (around \$200,000 per year) to support pre-development consultant and technical feasibility studies. The remainder of the fund will be support the development of renewable energy development projects. These programs took effect January 1, 2009.

Effective January 1, 2007, Rhode Island's gas-distribution utilities must include, with approval from the PUC, a surcharge of up to \$0.15 per decatherm delivered. The funds collected will support DSM programs that will be administered by the utilities, subject to PUC review. Gas-distribution utilities must collect these funds for seven years. (Gas used for distributed generation and in certain other applications is exempt from the surcharge.)

Renewable-energy systems eligible for support from the RIREF include facilities in the New England Power Pool (NEPOOL) control area that generate electricity using solar, wind, wave, tidal, ocean-thermal, geothermal, hydro or sustainably-managed biomass resources. Solar-thermal systems (including solar space-heating systems) are eligible if installed on low-income housing projects certified by the Rhode Island Housing and Mortgage Finance Corporation. In addition, co-firing systems are eligible for funding, as well as fuel cells and microturbines using renewable fuels. Projects and activities directly related to implementing eligible renewable-energy projects in Rhode Island also are eligible.

H.B. 7806 also directed the RIEDC to integrate and coordinate the state's renewable-energy policies -- including the RIREF, the Rhode Island Renewable Electricity Standard (RES) and the state's Regional Greenhouse Gas Initiative (RGGI) policy -- more effectively. See the RIEDC's 5-year Strategic Plan (2009-2013) for the Renewable Energy Development Fund for additional information.

Contact:

Julian Dash
 Rhode Island Economic Development Corporation
 315 Iron Horse Way, Suite 101
 Providence, RI 02908
Phone: (401) 278-9138
Fax: (401) 273-8270
E-Mail: jdash@riedc.com
Web Site: <http://www.riedc.com/business-services/renewable-energy>

EXHIBIT 21: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. VERMONT: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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Vermont

Incentives/Policies for Renewables & Efficiency

Clean Energy Development Fund (CEDF)

Last DSIRE Review: 06/22/2010

Program Overview:

State:	Vermont
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	CHP/Cogeneration, Comprehensive Measures/Whole Building, Other Efficiency Measures (not specified), Emerging Energy-Efficient Technologies
Eligible Renewable/Other Technologies:	Solar Water Heat, Solar Space Heat, Solar Thermal Electric, Solar Thermal Process Heat, Photovoltaics, Wind, Biomass, Geothermal Electric, Fuel Cells, Geothermal Heat Pumps, CHP/Cogeneration, Anaerobic Digestion, Small Hydroelectric
Applicable Sectors:	Commercial, Industrial, Residential, Nonprofit, Schools, Agricultural, Institutional
Types:	Renewables, energy efficiency
Charge:	Approximately \$6 million - \$7.2 million annually through March 2012 Additional money through the American Recovery and Reinvestment Act
Web Site:	http://publicservice.vermont.gov/energy/ee_cl...

Authority 1:

10 V.S.A. § 6523

Date Enacted:

6/21/2005 (subsequently amended)

Date Effective:

7/1/2005

Authority 2:

H. 781

Date Enacted:

06/04/2010

Date Effective:

06/04/2010

Summary:

Vermont's Clean Energy Development Fund (CEDF) was established in 2005 to promote the development and deployment of cost-effective and environmentally sustainable electric-power resources -- primarily renewable energy, and combined heat and power (CHP). The Vermont Recovery and Reinvestment Act (H. 313)* that passed in June 2009

extends the CEDF to include thermal, geothermal energy, and emerging energy-efficient technologies. H. 313 also requires that an amount equal to the value of the business solar energy tax credits granted is to be transferred out of the CEDF to the general fund on an annual basis.

The CEDF will receive annual payments of approximately \$4.5 million from Entergy, which owns the Vermont Yankee nuclear power plant in FY11 and FY12. In return, under terms of two memoranda of understanding between Entergy and the Vermont Department of Public Service (DPS), Entergy is permitted to store its own spent nuclear fuel at the Vermont Yankee plant until March 21, 2012, when the current operating license for this plant expires. Balances in the CEDF will be carried forward and may not be used for general obligations of Vermont's government.* In addition, the Vermont Recovery and Reinvestment Act mandates that all funding for the state energy program (SEP) and the energy efficiency and conservation block grant (EECBG) program from the Federal American Recovery and Reinvestment Act (ARRA) be included in CEDF (over \$30 million in total).

The CEDF is authorized to support renewable-energy resources, CHP systems and cost-effective energy-efficiency resources. Eligible renewable-energy systems include photovoltaics; solar-thermal; wind; geothermal heat pumps; farm, landfill and sewer methane recovery; low-emission, advanced biomass; and CHP systems using biomass fuels such as wood, agricultural or food wastes, energy crops and organic refuse-derived waste. (Municipal solid waste is not eligible.) CHP systems must have a design system efficiency of at least 65% and must meet Vermont's air-quality standards in order to qualify. H.B. 781 (June, 2010) authorizes the CEDF to support natural gas vehicles and/or fueling infrastructure.

The CEDF may be used to support projects that sell power in commercial quantities (especially those projects that sell electricity to Vermont utilities), projects to benefit publicly owned or leased buildings, renewable-energy projects on farms, small-scale renewable energy for homes and businesses, "effective projects that are not likely to be established in the absence of funding" under the CEDF and -- until December 31, 2008 -- super-efficient buildings. The CEDF has provided funding for the Vermont Solar and Small Wind Incentive Program, the CEDF Loan Program, and the CEDF Grant Program.

The DPS, which manages the CEDF, issued a strategic plan for the fund in May 2007. In addition, the CEDF FY 2010 Program Plan & Budget identifies the programs and financing initiatives that the CEDF supported from July 1, 2009, to June 30, 2010.

**The Vermont Reinvestment and Recovery Act (H 313), enacted in June 2009, supersedes the CEDF provisions included in the Vermont Energy Act (H 446) of May 2009.*

*** Legislation enacted in March 2008 required a fixed amount of \$20,000 to be redirected annually from the CEDF to support the cost of Vermont's tax credit for solar energy. Legislation enacted in June 2009 required that instead of a \$20,000 transfer from CEDF, a dollar amount equal to the cost of the business solar energy income tax credits be transferred from the CEDF to the general fund. Legislation enacted in June 2010 (781) maintains that transfer, and caps the amount of money authorized for tax credits at \$9,400,000.*

Contact:

Andrew Perchlik
Vermont Department of Public Service
Clean Energy Development Fund
112 State Street, Drawer 20
Montpelier, VT 05620-2601
Phone: (802) 828-4017
Fax: (802) 828-2342
E-Mail: Andrew.perchlik@state.vt.us
Web Site: <http://www.state.vt.us/psd>

EXHIBIT 22: DATABASE OF STATE INCENTIVES FOR RENEWABLES AND EFFICIENCY. 2010. WISCONSIN: INCENTIVE/ POLICIES FOR RENEWABLES & EFFICIENCY

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Wisconsin

Incentives/Policies for Renewables & Efficiency

Focus on Energy Program

Last DSIRE Review: 08/24/2010

Program Overview:

State:	Wisconsin
Incentive Type:	Public Benefits Fund
Eligible Efficiency Technologies:	Yes; specific technologies not identified
Eligible Renewable/Other Technologies:	Solar Water Heat, Photovoltaics, Wind, Biomass, Hydroelectric, Geothermal Electric, Geothermal Heat Pumps, Solar Pool Heating, Anaerobic Digestion, Tidal Energy, Wave Energy, Fuel Cells using Renewable Fuels
Applicable Sectors:	Commercial, Industrial, Residential, Nonprofit, Schools, Local Government, State Government, Tribal Government, Fed. Government, Multi-Family Residential, Agricultural, Institutional
Types:	Renewables, energy efficiency
Total Fund:	~\$83 million (2010), approximately 9.9% allocated for renewable energy
Charge:	Each utility is required to spend 1.2% of its annual operating revenue on efficiency and renewables.
Web Site:	http://www.focusonenergy.com

Authority 1:

Wis. Stat. § 196.374

Date Enacted:

03/17/2006 (Act 141 Amendments)

Date Effective:

07/01/2007 (as amended)

Authority 2:

Chapter PSC 137

Date Effective:

08/01/2007

Summary:

The Wisconsin Focus On Energy program supports statewide programs that promote energy efficiency and renewable energy*. The program was initially created by Act 9 of 1999 as a public benefit fund (PBF), which also included provided energy assistance programs for low-income residents (the Home Energy Plus Program). Focus On Energy was restructured in March 2006 by S.B. 459 (2005 Act 141). This law, most of which took effect July 1, 2007, replaced existing

renewable energy and energy efficiency PBF programs with programs that utilities create and fund through contracts with private program administrators, with oversight and approval by the PSC. Because Act 141 requires utilities to pay directly for programs, the state will not be able to transfer or otherwise use these funds for general obligations. (From 2002 to 2006, the governor and legislature transferred or reallocated more than \$108 million from the PBF to the state's general fund or for other uses.) Thus Focus On Energy is no longer precisely a state public benefits program, although it remains a statewide program that serves many of the same purposes that PBFs serve in other states.

Wisconsin utilities contract with the Wisconsin Energy Conservation Corporation (WECC), which administers the residential, business and renewable energy programs. The Energy Center of Wisconsin administers the Environmental and Economic R&D program. Collectively, the energy efficiency, renewable energy, and research components comprise the Focus on Energy initiative. Focus on Energy provides information, financial assistance, technical assistance and other services to residents, businesses, schools, institutions and local governments. Financial assistance takes the form of rebates, grants and loans.

Under Act 141, each electric utility and natural gas utility is required to spend 1.2% of the latest 3-year average of its gross operating revenue on energy-efficiency programs and renewable-resource programs. The PSC is authorized to specify a higher funding level and utilities will recover the cost through rates. With PSC approval, a utility may retain a certain portion of the revenue it is required to spend on statewide programs to administer or fund a new energy-efficiency program for the utility's large commercial, industrial, institutional or agricultural customers. The 2009 total Focus On Energy budget is approximately \$94 million.

"Large energy customers" may implement and fund an energy-efficiency project or a renewable-energy project and, with PSC approval, may deduct the cost from the amount the customer is required to pay its utility for cost recovery. The utility, in turn, deducts that amount from the amount that it is required to spend on statewide or utility-administered programs. A "large energy customer" is defined as a customer that has a monthly energy demand of at least 1,000 kilowatts or 10,000 therms of natural gas and, in any month, has been billed at least \$60,000 for electricity or natural gas - or both -- for all its facilities within a utility's service territory.

The state's municipal utilities and electric cooperatives have the option of participating in the state program or operating their own "commitment-to-community" programs, which are similar to Focus on Energy. There is a cap on fees for these programs of the lesser of \$375 per month or 1.5% of the total other monthly charges. The PSC does not oversee "commitment-to-community" programs, but Act 141 does require cooperatives and municipal utilities to submit annual program audit reports to the PSC. These programs remain otherwise unaffected by the Act 141 amendments.

History

The original PBF legislation required utilities to fund energy-efficiency programs and renewable-energy programs through (1) a public benefits fee that utilities collect directly from customers and (2) mandatory utility "contributions," which utilities recover from customers in rates. The amount of the charge was based on levels of utility expenditures for energy programs prior to the enactment of Act 9. The fee generated approximately \$16 million annually, and the charge generated approximately \$46 million annually. In fiscal year 2005, these two sources of revenue generated a combined total of \$62.9 million for renewables and efficiency. In addition, the state's five major investor-owned utilities administered and funded several related programs required by the Public Service Commission of Wisconsin (PSC). In 2004, the five utilities spent a combined total of approximately \$38.8 million on these programs, which included energy-efficiency projects, renewable-energy projects, load management, and related measures.

**The definition of "renewable resource" under Wis. Stat. § 196.374 includes solar, wind, water power (i.e., hydroelectric), biomass, geothermal, tidal or wave, and fuel cells that use renewable fuels. However, at present Focus On Energy does not offer incentives for all of these technologies. Please see the individual listings on the program website for detailed eligibility information.*

Contact:

Focus on Energy
431 Charmany Dr.
Madison, WI 53719
Phone: (800) 762-7077
Fax: (608) 249-0339
E-Mail: focusinfo@focusonenergy.com
Web Site: <http://www.focusonenergy.com>

Ministry of the
Attorney General
Constitutional Law Branch

720 Bay Street, 4th Floor
Toronto ON M7A 2S9

Tel: (416) 326-0131
Fax: (416) 326-4015
arif.virani@ontario.ca

Ministère du
Procureur général
Direction du droit constitutionnel

4^e étage, 720 rue Bay
Toronto ON M7A 2S9

Tél.: (416) 326-0131
Télé.: (416) 326-4015
arif.virani@ontario.ca



Via e-mail

December 20, 2010

Mr. Robert Warren
Weir Foulds
Suite 1600, P. O. Box 480
130 King St. W.
Toronto, ON
M5X 1J5

Dear Mr. Warren:

RE: Motion by the Consumer's Council of Canada ("CCC") and Aubrey LeBlanc in relation to s. 26.1 of the *Ontario Energy Board Act, 1998* (the "Act") and Ontario Regulation 66/10

Board File No.: EB-2010-0184

Attorney General of Ontario, Response to matters taken Under Advisement from the Cross-Examination of the Government's Witness

Please find enclosed the Attorney General of Ontario's Response to questions JT 1.4, 1.5 and 1.5 B, taken under advisement from the cross-examination of the Government's witness, which took place on November 16, 2010. Responses to questions JT 1.6 and 1.7, also taken under advisement, remain outstanding.

Yours very truly,

Arif Virani
Counsel

cc: Remaining Intervenors (by e-mail)

**RESPONSE TO MATTERS TAKEN UNDER ADVISEMENT, FROM THE CROSS-
EXAMINATION OF THE GOVERNMENT'S WITNESS, NOV. 16, 2010**

Number	
JT 1.4	Under Advise ment: To take under advise ment whether to produce any written recommendations or analysis provided to the Minister for the increase in OSTHI funding levels. Transcript p. 67, lines 18-28, p.68, lines 1-3 Response: Ministry staff did not provide direct recommendations to the Minister on this matter. The attached three notes (Exhibits 1, 2, 3) were provided only to the Minister's staff. Portions of Exhibits 2 and 3 have been redacted to protect the privacy interests of institutions involved in accessing rebates under the OSTHI program.
JT 1.5	Under Advise ment: To take under advise ment whether to produce any analysis/advice to given to the Minister respecting the content of ss.26.1 and 26.2 of the OEBA, at the time of the development of the Green Energy and Green Economy Act Transcript p.70, lines 7-13 Response: Relevant analysis/advice enclosed. See Exhibits 1, 2, and 3 attached. Relevant material includes documents pertaining to the ultimate decision taken by Government which is the subject of the constitutional challenge. Policy options, including the option of recovering costs against natural gas utilities/ratepayers and recovering costs for programs other than HESP or OSTHI, considered but never implemented by the Government, are not relevant.

	Policy options are only germane to a s.1 analysis when a constitutional challenge is initiated under the <i>Charter</i>, as opposed to the instant challenge brought under the division of powers. When determining whether a levy constitutes a regulatory charge <i>intra vires</i> the province, or an unconstitutional indirect tax, the legal inquiry is framed by the jurisprudential test set out by the Supreme Court in <i>Westbank</i> [1999] 2 S.C.R. 134 and refined in <i>620 Connaught</i> [2008] 1 S.C.R. 131. The criteria in the legal test are measured against the levy entrenched in the legislative scheme itself—an examination of the policy options considered but never implemented in the legislation is neither relevant nor appropriate to the reviewing court’s analysis: <i>Confederation des syndicats nationaux</i> [2008] 3 S.C.R. 511. The enclosed documents have been redacted to exclude: material irrelevant to the constitutional challenge to s.26.1 and 26.2 of the OEBA, and O. Reg. 66/10 thereto; material irrelevant to the jurisprudential test relating to whether a levy constitutes an <i>intra vires</i> regulatory charge, and; material covered under solicitor-client privilege. Exhibit 1 (Note) Rationale for the Reallocation of MEI Multi-Fuel conservation program costs to Electricity Ratepayers Exhibit 2 (Note) Program Cost Recovery Outline Exhibit 3 (Slide Deck) Program Cost Recovery 2009-04-27 + PK’s comments
JT 1.5b	Under Advisement: To take under advisement whether to provide any Ministry reports or analyses that support the creation and implementation of O.Reg. 66/10 Transcript, p.78, lines 11-18 Response:

	Relevant document enclosed. See Exhibit 1 (Slide Deck) attached. (For an explanation of relevance, and the basis for redactions made, please see the Response to Under Advisement JT 1.5, above.) The enclosed document has been redacted to exclude: material irrelevant to the constitutional challenge to s.26.1 and 26.2 of the OEBA, and O. Reg. 66/10 thereto, and; material irrelevant to the jurisprudential test relating to whether a levy constitutes an <i>intra vires</i> regulatory charge.
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UNDER ADVISEMENT NO. JT1.4:**Exhibit 1
BRIEFING NOTE****NRCan Increases Maximum Per-Project Payment for Solar Hot Water Systems under the
□coEnergy for Renewable Heat Program****ISSUE:**

On March 2, 2009, Natural Resources Canada (NRCan) announced that the maximum payment under the □coEnergy for Renewable Heat Program for solar hot water (SHW) projects will increase from \$80,000 to \$400,000. This change is effective March 1, 2009.

SUGGESTED RESPONSE

- The Ministry has reviewed NRCan's changes and agrees that increasing the maximum incentive for solar hot water will encourage the installation of larger solar hot water projects while stimulating further economic activity in the province.
- Ministry staff believe that increasing the maximum SHW incentive to \$400,000 has the potential to increase OSTHI spending by \$960,000 per year over the final two years for the program.
- Ministry staff have analyzed the impact of the increased incentive and do not believe that the changes are likely to result in OSTHI overspending its program budget.
- Ministry staff will monitor the impact of the increased incentive to ensure that OSTHI does not risk overspending its program budget.
- Ministry staff are currently analyzing the impact of a similar increase for Solar Air projects in the event the NRCan revises their maximum incentive for this technology.

Background:

- The Ontario Solar Thermal Heating Incentive program is a four-year \$14.4 million rebate program that currently has a maximum incentive of \$80,000 for the installation of a solar water or solar air heating system.
- OSTHI is delivered in cooperation with NRCan's federal □coEnergy for Renewable Heat program.
- On September 1, 2008, both MEI and NRCan implemented planned changes to the basis of payment for solar thermal projects. The changes moved the OSTHI incentive from one based on a percentage

of project costs to one based on a rate per square meter of collector area multiplied by a collector-specific performance factor.

Implications of increasing the Solar Hot Water Incentive for the OSTHI Program:

- On March 2, 2009, NRCan announced that the *EcoEnergy for Renewable Heat program's* maximum payment for solar hot water will increase from \$80,000 to \$400,000. This change will be effective March 1, 2009.
- Since the new incentive structure for OSTHI was implemented September 1, 2008, the average OSTHI incentive for a solar hot water system is 19%. Based on this average, to receive the maximum OSTHI incentive of \$400,000, SHW projects costs would need to exceed \$2.1 million. To date, the largest SHW project incurred projects costs of \$391,000 with the average SHW project having project costs of \$62,178.
- To receive the maximum incentive with the most efficient SHW collector, system size will have to be 1,372 m² (larger for less efficient collectors) – this is over 20 times the average SHW system size (63 m²) under OSTHI and 5 times larger than the maximum SHW system size (264 m²) under OSTHI.
- Based on the high project cost required to receive a higher incentive, the average size of SHW applications, and the current economic conditions, OSTHI staff have estimated that the increase in maximum funding for SHW will result in maximum additional funding of \$960,000 per year (3 projects that qualify for the maximum incentive or a combination of projects receiving \$80,000 <- \$400,000 in OSTHI funding).
- OSTHI staff have projected the impacts of increasing the SHW cap to \$400,000 (see appendix A for a break-down of OSTHI projections):
 - Low Take-Up – OSTHI does not risk overspending in then next two years
 - Average Take-Up – OSTHI does not risk overspending in the next two years
 - High Take-Up – OSTHI does not risk overspending in 2009/2010 but risks overspending by \$166,377 in 2010/2011; however, as many OSTHI projects are coming in under budget, it is likely that even in this scenario, OSTHI would have enough money in 2010/2011 to cover this additional \$166,377.
- Ministry staff believe that the average take-up scenario is most likely to occur; however, OSTHI staff will closely monitor the impact of program changes to ensure that OSTHI will not overspend its allocated budget.

Prepared by: Matthew Kitchen
Project Analyst
416-212-4283
March 2, 2009

Reviewed by: Brian Byrnes
Senior Program Coordinator
416-212-7919
March

UNDER ADVISEMENT JT 1.4

Exhibit 2

BRIEFING NOTE

NRCan Increases Maximum Per-Project Payment for Solar Hot Water Systems under the ecoENERGY for Renewable Heat Program

ISSUE:

On March 2, 2009, Natural Resources Canada (NRCan) announced that the maximum payment under the ecoENERGY for Renewable Heat Program for solar hot water projects will increase from \$80,000 to \$400,000. This change is effective March 1, 2009.

SUGGESTED RESPONSE

- The Ministry has reviewed NRCan's changes and agrees that increasing the maximum incentive for solar hot water will encourage the installation of larger solar hot water projects while stimulating further economic activity in the province.
- Ministry staff believe that increasing the maximum SHW incentive to \$400,000 has the potential to increase OSTHI spending by \$960,000 per year over the final two years for the program.
- Ministry staff have analyzed the impact of the increased incentive and do not believe that the changes are likely to result in OSTHI overspending its program budget.
- Ministry staff will monitor the impact of the increased incentive to ensure that OSTHI does not risk overspending its program budget.

Background:

- To date, OSTHI has received two applications that would benefit from the increased incentive:
 - [REDACTED] – incentive of \$133,480.29;
 - [REDACTED] – incentive of \$140,078.69
- The Ontario Solar Thermal Heating Incentive program is a four-year \$14.4 million rebate program that currently has a maximum incentive of \$80,000 for the installation of a solar water or solar air heating system.
- OSTHI is delivered in cooperation with NRCan's federal *ecoENERGY for Renewable Heat* program.

- On September 1, 2008, both MEI and NRCan implemented planned changes to the basis of payment for solar thermal projects. The changes moved the OSTHI incentive from one based on a percentage of project costs to one based on a rate per square meter of collector area multiplied by a collector-specific performance factor.
- To date, OSTHI has committed over \$4.5 million to 209 solar hot water and air projects.

Implications of increasing the Solar Hot Water Incentive for the OSTHI Program:

- On March 2, 2009, NRCan announced that the *ecoENERGY for Renewable Heat program's* maximum payment for solar hot water will increase from \$80,000 to \$400,000. This change will be effective March 1, 2009.
- Since the new incentive structure for OSTHI was implemented September 1, 2008, the average OSTHI incentive for a solar hot water system is 19%. Based on this average, to receive the maximum OSTHI incentive of \$400,000, SHW projects costs would need to exceed \$2.1 million.
- To receive the maximum incentive with the most efficient SHW collector, system size will have to be 1,372 m² (larger for less efficient collectors) – this is over 20 times the average SHW system size (63 m²) under OSTHI and 5 times larger than the maximum SHW system size (264 m²) under OSTHI.
- Based on the high project cost required to receive a higher incentive, the average size of current SHW applications, and the current economic conditions, OSTHI staff have estimated that the increase in maximum funding for SHW will result in maximum additional funding of \$960,000 per year (3 projects that qualify for the maximum incentive or a combination of projects receiving \$80,000 < \$400,000 in OSTHI funding).
- OSTHI staff have projected the impacts of increasing the SHW cap to \$400,000 (see appendix A for a break-down of OSTHI projections):
 - Low Take-Up – OSTHI does not risk overspending in then next two years
 - Average Take-Up – OSTHI does not risk overspending in the next two years
 - High Take-Up – OSTHI does not risk overspending in 2009/2010 but risks overspending by \$166,377 in 2010/2011; however, as many OSTHI projects are coming in under budget, it is likely that even in this scenario, OSTHI would have enough money in 2010/2011 to cover this additional \$166,377.
- Ministry staff believe that the average take-up scenario is most likely to occur; however, OSTHI staff will closely monitor the impact of program changes to ensure that OSTHI will not overspend its allocated budget.

Prepared by: Matthew Kitchen
 Project Analyst
 416-212-4283
 August 26, 2009

UNDER ADVISEMENT JT 1.4**Exhibit 3
BRIEFING NOTE****NRCan Increases Maximum Per-Project Payment for Solar Hot Water Systems under the ecoENERGY for Renewable Heat Program****ISSUE:**

On March 2, 2009, Natural Resources Canada (NRCan) announced that the maximum payment under the ecoENERGY for Renewable Heat Program for solar hot water projects will increase from \$80,000 to \$400,000. This change is effective March 1, 2009.

SUGGESTED RESPONSE

- The Ministry has reviewed NRCan's changes and agrees that increasing the maximum incentive for solar hot water will encourage the installation of larger solar hot water projects while stimulating further economic activity in the province.
- Ministry staff believe that increasing the maximum SHW incentive to \$400,000 has the potential to increase OSTHI spending by \$960,000 per year over the final two years for the program.
- Ministry staff have analyzed the impact of the increased incentive and do not believe that the changes are likely to result in OSTHI overspending its program budget.
- Ministry staff will monitor the impact of the increased incentive to ensure that OSTHI does not risk overspending its program budget.

Background:

- The Ontario Solar Thermal Heating Incentive program is a four-year \$14.4 million rebate program that currently has a maximum incentive of \$80,000 for the installation of a solar water or solar air heating system.
- OSTHI is delivered in cooperation with NRCan's federal *ecoENERGY for Renewable Heat* program.

Implications of increasing the Solar Hot Water Incentive for the OSTHI Program:

- The program to date has been successful in attracting projects, but they are relatively small with average incentives roughly \$15,000 and a handful at the maximum of \$80,000.
- The initial enquiry to increase the limit concerned a large project by a developer for a system at [REDACTED]. Subsequently a number of other large projects were identified and it was considered that a number of larger projects would be helpful to showcase the market opportunities.
- There are four projects which have been submitted and approved by NRCan so far (all SHW):
 - [REDACTED] – incentive of \$133,408.29;
 - [REDACTED] – incentive of \$140,078.69
 - [REDACTED] – incentive of \$108,060.70
 - [REDACTED] – incentive of \$84,538.03
- Other project proponents with larger projects are reported by NRCan to be interested but have chosen to confirm the province's commitment before submitting projects for approval
- Treasury Board approval is not required for this change: it is not a material change in the program design (still matches NRCan) and has no fiscal impact as the change will be accommodated within the approved budget.
- OSTHI staff have projected the budget impacts of increasing the SHW cap to \$400,000 and do not believe there is a risk of overspending.

Prepared by: Matthew Kitchen
Project Analyst
416-212-4283

Reviewed by: Brian Byrnes
Senior Program Coordinator
416-212-7919

UNDER ADVISEMENT NO. JT 1.5**EXHIBIT 1: COPY OF GEA_RATIONAL FOR REALLOCATION OF MEI PROGRAM COSTS TO RATEPAYERS****RATIONALE FOR THE REALLOCATION OF MEI MULTI-FUEL CONSERVATION PROGRAM COSTS TO ELECTRICITY AND NATURAL GAS RATEPAYERS****ISSUE**

Ongoing costs relating to MEI multi-fuel conservation programs are more appropriately borne by the natural gas and electricity ratepayers given that the predominant beneficiaries for these programs are the natural gas and electricity ratepayers.

BACKGROUND*Context*

Energy conservation programs are generally administered by energy agencies and utilities such as the Ontario Power Authority, the natural gas utilities, and the local distribution companies (LDCs)¹.

The costs of those programs are recovered from energy users (ratepayers) through various mechanisms that result in charges being added to energy bills and remitted to the organization administering the program on a cost-recovery basis. The benefits of those programs are calculated on the basis of deferred investments in the energy system (e.g. generation or distribution infrastructure) and are established via a variety of cost-benefit tests.

MEI's involvement in program delivery has been justified on the basis of a structural gap in the energy sector which prevents any of the existing agencies and market participants from delivering multi-fuel conservation programs (e.g. a program that saves both natural gas and electricity)². The benefit to the energy users from such a multi-fuel program is derived from not only the strengths of an integrated conservation offering (given that most energy users are, in fact, multi-fuel users) but also from the efficiencies in being able to deliver a multi-fuel program through one service provider (i.e. MEI), rather than multiple parties.

Rationale

MEI's multi-fuel conservation programs have been more successful than anticipated, in terms of levels of participation, and are placing increasing pressures on the Treasury. Given that the primary rationale and beneficiary of these programs is the energy user, MEI is proposing to recover the appropriate portion of its multi-fuel program costs from the ratepayers.

¹ electric utilities

² Regulatory structure of the industry prevents, in large part, an electricity utility from recovering costs for anything but conservation of electricity, and so on.

This proposal seeks to redistribute those costs in anticipation of continued MEI multi-fuel programs and in a manner that conforms to industry-accepted valuations of the ratepayer benefit from conservation programs. The general approach to establishing these benefits are to make use of cost-benefit tests to provide consistency and transparency of method.

Industry-standard methods of performing these cost-benefit tests rely on both (1) determining rules for establishing which program costs are "recoverable" from the ratepayer and part of the cost-benefit test, and (2) determining the benefit ratepayers derive in the form of deferred investments in the energy system and direct benefits from lower commodity costs.

One such test is the Total Resource Cost (TRC) test, used by the Ontario Energy Board as well as many other North American jurisdictions to assess the cost/benefit equation for conservation programs. The TRC test *assesses total conservation costs and benefits under a series of generally conservative assumptions. The benefits are defined as "avoided costs". This represents the benefit of not having to provide an extra unit of supply – typically expressed as kW and/or kWh, or m3 of gas. For electricity, supply costs include the generation, transmission and distribution costs, while for gas the major component is the gas itself, with marginal contributions from the transmission, storage and distribution costs.*

NOTE FROM PK TO KEN N: I CHANGED TO AVOID TALKING ABOUT SOCIETAL TESTS. SOCIETAL AUTOMATICALLY IMPLIES A GENERALIZE, OR SOCIALIZED, BENEFIT- EXACTLY WHAT WE WANT TO NOT SAY HERE. WE WANT THE CHARGES RESTRICTED TO A SUB- SECTOR OF "SOCIETY"(SAY, GAS RATEPAYERS) AND BENEFITS TOO.

The data for determining the avoided cost is subject to technical research and analysis and could include time-variable factors, environmental externalities, and be affected by the assumptions in future energy development paths (e.g. choice of future electricity supply sources)³. As a result, this analytical process would be expected to be refined and adapted over time.

Design of Proposed Solution

Given this dynamic analytical environment, MEI needs to establish a cost-recovery mechanism with sufficient flexibility to accommodate future policy and energy sector developments. In order to establish the appropriate rigour, transparency, and justification for imposing MEI program costs on the ratepayers, the following process would be established and described through regulation [James R: will MEI describe the following points via regulation?]:

1. Definition of MEI program costs included and excluded from cost-recovery process

MEI would continue to fund activity for propane and oil conservation, where there is no pre-existing mechanism for allocating costs directly to these energy users. Further, MEI would continue to fund all program administration costs (staff, IT resources, etc) for its multi-fuel programs.

Specifically, MEI would seek cost recovery of the non-administrative costs directly related to natural gas and electricity conservation efforts.

³ Sample data chart attached at end of document

- Definition of generic cost-benefit tests that would be utilized by MEI in seeking cost-recovery for appropriate costs

The regulation would identify whatever principles necessary to establish the appropriate regulatory framework for cost recovery. Recovery for non-administrative natural gas and electricity conservation program costs would be guided by such cost-benefit tests as approved by the Minister.

- Establishment of principles of transparency and ratepayer benefit in the cost recovery process, with a full disclosure process relating to the individual cost recovery claims being submitted to the regulator

There would be disclosure made on the nature of the cost recovery tests at each cost recovery instance and, therefore, an affirmation that the specific cost recovery instance abided by the general guidelines imposed upon itself by MEI.

Implementation

MEI seeks the necessary legislative changes to enable a flexible and transparent cost recovery process that conforms to industry norms and the principle of recovering costs commensurate with benefits to the energy sector. Further details, as described above, would be laid out in regulations before proceeding with seeking cost recovery for MEI multi-fuel programs.

NOTE FROM PAUL K: DO WE NEED THIS CHART?

Attachment: Sample data chart from avoided cost analysis for electricity conservation

Attachment 1:
Avoided Cost of Energy, and of Generation, Transmission and Distribution Capacity¹

Year	Ontario Seasonal Average Avoided Energy Cost (CAD\$/MWh)								Avoided Generation Capacity Costs (CAD\$/kw-yr)	Avoided Transmission Capacity Costs (CAD\$/kw-year)	Avoided Distribution Capacity Costs ² (CAD\$/kw-year)	Avoided Capacity Costs for Demand Response (CAD\$/kW-yr)
	On Peak	Mid-Peak	Off-Peak	On Peak	Mid-Peak	Off-Peak	Mid-Peak	Off-Peak				
Hours/Period	602	686	1614	522	783	1635	1205	1623	n/a	n/a	n/a	n/a
2006	122.9	53.9	25.4	112.7	51.4	27.5	24.2	22.3	0.00	0.00	0.00	0.00
2007	124.5	54.3	25.2	111.5	51.5	27.5	24.2	21.5	0.00	0.00	0.00	0.00
2008	115.4	56.5	24.5	110.6	49.9	29.1	24.5	22.5	0.00	0.00	0.00	0.00
2009	111.9	77.1	24.5	104.5	75.5	47.6	55.4	23.4	62.57	5.75	0.00	146.70
2010	112.5	77.4	32.1	107.0	82.5	49.2	53.5	23.4	71.49	5.90	0.00	146.55
2011	112.2	77.3	32.7	103.2	81.3	49.5	54.2	23.0	85.42	6.05	0.00	150.41
2012	112.4	76.9	31.3	112.1	82.5	51.2	58.5	27.5	61.20	5.23	0.00	150.37
2013	125.2	86.4	35.5	116.5	91.3	54.0	62.5	31.5	61.60	5.35	0.00	154.25
2014	125.7	82.4	32.8	127.5	95.9	55.7	55.5	34.4	45.53	5.32	0.00	156.23
2015	127.4	84.7	35.6	131.6	106.7	52.5	102.6	35.5	21.16	5.65	0.00	156.22
2016	131.7	97.3	72.5	125.5	105.1	69.9	104.5	31.4	25.55	5.85	0.00	166.21
2017	135.0	100.0	70.1	131.2	104.5	65.3	105.2	32.8	21.94	7.02	0.00	162.33
2018	142.3	102.7	73.4	134.4	112.5	65.6	103.0	34.3	31.55	7.15	0.00	164.10
2019	144.5	105.4	74.6	135.3	113.2	68.2	109.7	35.7	33.41	7.37	0.00	166.59
2020	143.9	103.1	74.5	135.3	112.2	69.6	111.4	37.2	31.55	7.52	0.00	168.73
2021	150.4	110.4	75.0	137.1	115.5	71.5	114.7	35.1	38.27	7.74	0.00	170.57
2022	155.5	112.7	80.0	137.5	119.4	73.4	117.9	31.0	41.97	7.84	0.00	173.16
2023	159.3	115.0	82.1	138.7	122.4	75.3	121.1	32.5	44.22	8.14	0.00	175.46
2024	163.7	117.3	84.2	135.5	125.2	77.2	124.3	34.5	45.55	8.35	0.00	177.77
2025	165.1	119.7	85.3	135.2	122.2	79.1	127.5	36.1	42.92	8.55	0.00	180.25

¹ Navigant Consulting Ltd. on behalf of Hydro One Network Inc. "Avoided Cost Study for the Evaluation of CDM Measures" June 14, 2005 inflated at 2.5% and Hydro One Networks Inc. "Preliminary Distribution Cost Assessment for Hydro One" June 14, 2005 inflated at 2.5%.

² Please refer to the cover document titled "Avoided Cost of Energy, and of Generation, Transmission and Distribution Capacity" and Attachment 2 for instructions.

UNDER ADVISEMENT JT 1.5

EXHIBIT 2: COPY PROGRAM COST RECOVERY OUTLINE- ORIGINAL

Program Cost Recovery

Policy Intent: Energy Efficiency program costs, regardless of who delivers, should have appropriate costs allocated to the electricity or natural gas rate base in proportion to the benefits which result with a suitable accountability framework for the use of such funds.

This is the case for CDM projects delivered by OPA and LDCs as well as DSM by Union Gas and Enbridge. Savings from government initiated programs have no such mechanism.

Benefits: a measure of acceptable rate impact which may include consideration of provincial policy objectives related to GHG emission reduction or other factors (e.g. social equity, R&D). Test such as TRC, RIM, participant tests will need to be reviewed and modified as required. Tests would be used as a matter of program discipline, not for debate before a regulator.

Appropriate Costs: up to the benefit calculated above. Direct program costs would be allocated by electricity and natural gas savings achieved, by rate category as required. Costs related to staffing and administration would remain with the MEI and not charged back.

Suitable accountability framework: may vary by option depending on depth of reporting requirements but features public reporting not subject to comment by the regulator.

Options:

1. Charge back for government program costs - Each of Union Gas/Enbridge and OPA would be directed to pay allocated costs and recover funds (through gas rates for natural gas and GAM for electricity costs).
2. SBC for government programs only – government would direct OEB to recover pre-determined funds (annually or multi-year budgets) by Union Gas/Enbridge and OPA. 27.1 of OEB Act would be amended such that hearings would not be required.
3. SBC for all programs regardless of who delivers – Guided by government policy, OEB would direct recovery of funds following a board hearing which would establish a pool of funds available for DSM and rules for accessing funds. A share would be allocated to government programs. Same process for CDM but featuring a consolidation of charges (including -----)

For each:

Further elaborate on description, mechanics of implementation

Pros/Cons

Considerations

Anticipated Stakeholder reaction

UNDER ADVISEMENT JT 1.5

**EXHIBIT 3: PROGRAM COST RECOVERY 2009-04-27+PK's
COMMENTS**

[SEE ATTACHED PDF DOCUMENT]

ST 1.5 Exhibit 3

EXHIBIT : PROGRAM COST RECOVERY 2009-04-27-PRK's
COMMENTS

As amended

MEI Program Cost Recovery

330

Date Prepared: April 20, 2009



Ontario

Renewables and Energy Efficiency Division

MEI programs

- ◆ At this time, funds collected via the proposed MEI Cost Recovery are intended to be used to support the delivery of multi-fuel energy conservation programs and renewable energy development. Three programs will be included for FY 2009/2010 at an estimated total cost of approximately \$150 million.
- ◆ The programs are: PowerHouse, Home Energy Savings Program, and the Ontario Solar Thermal Heating Incentive Program. All these programs affect both electricity and natural gas users, as well as users of other fuels.
 - ↳ **PowerHouse** offers a low or zero interest loan to residential applicants to purchase and install one of four conservation measures: a ground source heat pump, a solar photo-voltaic panel, a solar thermal panel, microwind.
 - ↳ **The Home Energy Savings Program (HESP)** provides incentives to residential homeowners to carry out conservation measures at home. The program subsidizes a home energy audit for 50% of the cost of the audit, up to \$150. The program then pays retrofit grant to homeowners who completes energy retrofits recommended through the audit. The retrofit grant is matched by the federal government's eco-energy program; thus, every federal dollar in benefits to the participant is matched by the province with another dollar of benefit to the participant.
 - ↳ **The Ontario Solar Thermal Heating Initiative (OSTHI)** program similarly subsidizes the installation of large (commercial) solar air and solar water roofs. The first are generally used to substitute natural gas heating in warehouses, barns, etc; while the solar water is used to pre-heat water.

Timeline



Regulation Approved June 30 every year:

- Total Amount to be collected from Natural Gas and Electricity for the FY
- Two assessment dates (October 1 and February 1) from Natural Gas and from Electricity
- Each assessment for 50% of the annual assessment of the utility
- Methods: a. Board and IESO (for Tx connected) to work out the electricity assessments; Board to work out the Natural Gas assessments. b. Both are volumetric in basis (cubic m or kwh). Volumetric assessment based on 12 months period ended last December 31.
- Assessments include method of payment: directly to Consolidated Revenue Fund, electronic bank transfer instructions



Cost Recovery: Principles and Rules

- ◆ Principles and Rules created based on what data is available to be used
- ◆ When the energy retrofit measure reduces the consumption of only one fuel:
 - ↳ allocate the full cost to that fuel. For example:
 - If energy retrofit measures displace/reduce electricity consumption only
 - 100% cost assigned to **Electricity**
 - If energy retrofit measures displace/reduce natural gas consumption only
 - 100% cost assigned to **Natural Gas**
 - If energy retrofit measures displace/reduce the consumption of other fuels only
 - 100% cost assigned to **Other**
- ◆ When the energy retrofit measure reduces the consumption of several fuels or reduces the consumption of some fuels and increases the consumption of other fuels:
 - ↳ If the measure affects the building envelope (insulation, doors, windows, etc): allocate 90%/10% cost to fuel displaced-electricity
 - ↳ If the measure does not affect the building envelope (ground source heat pump): allocate the cost to the displaced fuel
 - ↳ Always allocate the furnace DC motor cost to **Electricity**

Cost Recovery – Estimated Breakdown by Program

Program	Natural Gas		Electricity		Other		Total
OSTHI (Ontario Solar-Thermal Heating Incentive)							
PowerHouse							
OHESP (Ontario Home Energy Savings Program)	\$104M	71%	\$29M	20%	\$13M	9%	\$146M
Total							

334



Ontario

Renewables and Energy Efficiency Division

Cost Recovery Example: Ontario Solar Thermal Heating Incentive

♦ Sample Project 1:

- ☞ Solar Water Installation on Apartment Building
- ☞ Total System Cost: \$7,495.00; Ontario Contribution: \$1,873.50
- ☞ Displaced Energy: Electricity
 - Invoice split for NG – 0%; Invoice split for Electricity – 100%; Invoice Split for Taxes – 0%

♦ Sample Project 2:

- ☞ Solar Air Installation on Farm Building
- ☞ Total System Cost: \$214,262.19; Ontario Contribution: \$53,565.55
- ☞ Displaced Energy: Natural Gas
 - Invoice split for NG – 100%; Invoice split for Electricity – 0%; Invoice Split for Taxes – 0%

♦ Sample Project 3:

- ☞ Solar Air Installation on Farm Building
- ☞ Total System Cost: \$321,942.65; Ontario Contribution: \$80,000.00
- ☞ Displaced Energy: Propane
 - Invoice split for NG – 0%; Invoice split for Electricity – 0%; Invoice Split for Taxes – 100%



Cost Recovery Example: PowerHouse

- ♦ **Sample Project 1:**
 - ☞ Solar Water Installation
 - ☞ Total System Cost: \$7,500.00; Ontario Contribution: \$875.00*
 - ☞ Displaced Energy: Natural Gas
 - Invoice split for NG – 100%; Invoice split for Electricity – 0%; Invoice Split for Taxes – 0%
- ♦ **Sample Project 2:**
 - ☞ Solar PV Installation
 - ☞ Total System Cost: \$30,000.00; Ontario Contribution: \$4,750.00*
 - ☞ Displaced Energy: Electricity
 - Invoice split for NG – 100%; Invoice split for Electricity – 100%; Invoice Split for Taxes – 0%
- ♦ **Sample Project 3:**
 - ☞ Wind Turbine Installation
 - ☞ Total System Cost: \$30,000.00; Ontario Contribution: \$4,750.00*
 - ☞ Displaced Energy: Electricity
 - Invoice split for NG – 0%; Invoice split for Electricity – 100%; Invoice Split for Taxes – 0%

* estimated



Cost Recovery Example: PowerHouse (contd.)

♦ Sample Project 4:

- ⌘ Geothermal Installation (house with central air conditioning)
- ⌘ Total System Cost: \$25,000.00 Ontario Contribution: \$3,750.00*
- ⌘ Displaced Energy: Natural Gas (heating); Electricity (cooling)
 - Invoice split for NG – 90%; Invoice split for Electricity – 10%; Invoice Split for Taxes – 0%

♦ Sample Project 5:

- ⌘ Geothermal Installation (house with no central air conditioning)
- ⌘ Total System Cost: \$25,000.00 Ontario Contribution: \$3,750.00*
- ⌘ Displaced Energy: Natural Gas (heating)
 - Invoice split for NG – 100%; Invoice split for Electricity – 0%; Invoice Split for Taxes – 0%

♦ Sample Project 6:

- ⌘ Geothermal Installation (house with central air conditioning)
- ⌘ Total System Cost: \$25,000.00 Ontario Contribution: \$3,750.00*
- ⌘ Displaced Energy: Heating Oil (heating); Electricity (cooling)
 - Invoice split for NG – 0%; Invoice split for Electricity – 10%; Invoice Split for Taxes – 90%

* estimated



Cost Recovery Example: OHESP

♦ Sample Project 1

⚡ Displaced Energy: Natural Gas (heating); Electricity (cooling)

Retrofit Ont.	Air Sealing	Central AC	ESTAR Doors
Contribution	\$150.00	\$200.00	\$90.00
Split (%)	NG - 90; Elec - 10	Elec - 100	NG - 90; Elec - 10
Split (\$)	NG - \$135; Elec - \$15	Elec - \$200	NG - \$81; Elec - \$9

⚡ Total: Ontario Contribution: \$440; SBC: Natural Gas: \$216; Electricity: \$224

♦ Sample Project 2

⚡ Displaced Energy: Oil (heating); Electricity (cooling)

Retrofit Ont.	Air Sealing	Central AC	ESTAR Doors	Attic Insulation
Contribution	\$150.00	\$200.00	\$90.00	\$300.00
Split (%)	Taxes - 90; Elec - 10	Elec - 100	Taxes - 90; Elec - 10	Taxes - 90; Elec - 10
Split (\$)	Taxes - \$135; Elec - \$15	Elec - \$200	Taxes - \$81; Elec - \$9	Taxes - \$270; Elec - \$30

⚡ Total: Ontario Contribution: \$740; SBC: Taxes: \$486; Electricity: \$254



Ontario

Renewables and Energy Efficiency Division

As amended

UNDER ADVISEMENT JT 1.5B

EXHIBIT 1

SLIDE DECK TO UPDATE MINISTER

[SEE ATTACHED PDF DOCUMENT]

As amended

JT 1.5 B

Exhibit 1



MINISTRY OF ENERGY AND INFRASTRUCTURE

REPORT OF THE MINISTER OF ENERGY AND INFRASTRUCTURE

- To update the Minister on the status of a regulation under the GEA to recover the cost of MEI's conservation programs from gas and electricity ratepayers.
 - Why
 - How much
 - Who Pays – Apportioning the costs amongst Residential, Commercial, Industrial users
 - What consumers will see on their bills
 - Timing considerations
- Specifically to request direction about how to apportion the charges to different classes of ratepayers.

2



MINISTRY OF ENERGY AND INFRASTRUCTURE

REPORT OF THE MINISTER OF ENERGY AND INFRASTRUCTURE

- The Green Energy Act includes provisions allowing recovery of funds for MEI multi-fuel conservation programs from ratepayers (consistent with ratepayers currently funding all other conservation programs).
- Two MEI programs are in market: the Ontario Solar Thermal Heating Initiative (OSTHI) program and the Home Energy Savings Program (HESP).
 - Both of these programs are scheduled to run until March 2011 while a third program is in the planning stages (PowerHouse).
- The expense associated with current MEI programs for FY 09/10 is estimated at \$165 million. \$140 million would be funded from gas and electricity ratepayers while the rest (admin, oil/propane related incentives) would be paid by existing MEI allocations.
- The \$140 million that needs to be recovered is next apportioned to gas and electric ratepayers by determining the costs associated with the gas and electricity savings that HESP and OSTHI would yield. MEI estimates the division to be: \$40 million (electricity) and \$100 million (gas)

	Gas (\$million)	Electricity (\$million)
HESP	99	39
OSTHI	1	1
Total	100	40

3



MINISTRY OF ENERGY AND INFRASTRUCTURE

Current Status

- MEI staff have worked extensively with internal and external stakeholders to develop a process for cost recovery. It would require the OEB to assess gas and electric utilities for amounts as identified in a regulation, to be filed annually on the basis of Treasury Board approved figures.
- Direction is required in three key areas in order to complete the drafting of the regulation:
 1. The allocation of the charges to different ratepayers - i.e., determining who pays how much towards these costs is likely to be controversial as different groups of ratepayers will either prefer not to pay, or to shift the responsibility to other groups of ratepayers.
 2. Avoiding a negative cash flow at the utility due to remitting funds to MEI before they collect from the ratepayers.
 3. Showing this charge as a segregated and noticeable item in gas bills.



Ontario

MINISTRY OF ENERGY AND INFRASTRUCTURE

Issue 1: Apportioning the Charges

- Considerations on which customer class is charged and for how much:
 - Who benefits directly from the programs (e.g. residential)?
 - Who benefits indirectly from reducing demands on the energy infrastructure for expansion of storage (gas), distribution (both electricity and gas), and generation (electricity) capacity?
 - What are the rate impacts?
 - What is the constitutional law assessment of whether the recovery may be viewed as a regulatory charge or a tax?
- The gas apportionment is the most contentious.



MINISTRY OF ENERGY AND INFRASTRUCTURE

Apportioning the Charges: Gas Options

Recovery from gas users: \$0
(all amounts annual)

\$50M

\$100M

Option 1:

Pay based on
volume of gas
consumed
Rate: \$/m³ 0.0035

Residential	Commercial	Industrial
\$10 (avg.)	\$640 (avg.)	\$37,500 (avg.) Largest = \$2M+

2 customers	>\$2M
4 customers	>\$1M
7 customers	>\$0.5M
15 customers	>2M

The volumetric approach apportions equal charges regardless of rate class and emphasizes system benefit of reduced gas use over the direct benefits to the programs which are mostly in the residential class

Rate Impacts are modest except for the largest industrial customers – about 2 dozen would pay over \$100,000 per year, the very largest over \$2 million. Gas companies and industrial users are concerned that increasing industrial rates will negatively impact these customers, particularly at this time of a weakened economy

Solicitor-Client Privilege
(last paragraph only)

Estimates are annual and averages only – actuals will vary by customer



MINISTRY OF ENERGY AND INFRASTRUCTURE

Apportioning the Charges: Gas Options

Recovery from gas users: \$0 \$50M \$100M
(all amounts annual)

Option 2:

Model based on how utilities recover their own infrastructure costs, and with industrial caps

Residential	Commercial	Industrial
\$25	\$120 EGD \$430 Union	\$3,300 (avg.) EGD \$13,800 (avg.) Union

Enbridge and Union proposed a method which reflects their infrastructure cost to serve each sector; this method shifts the costs to the residential market reducing the cost to industry. Industrial impact can be further reduced by adding a cap of \$100,000.

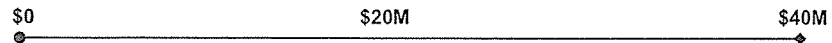
Solicitor-Client Privilege
(second paragraph only)

This option has strong stakeholder support, in the form of gas distributors and the Industrial Gas Users Association (IGUA).

* Estimates are annual and averages only – actuals will vary by customer

Apportioning the Charges: Electricity Options

Recovery from electricity users:
(all amounts annual)



Pay based on
volume of electricity
consumed
Rate: \$/Kwh 0.00028

Residential	Commercial	Industrial
\$3 (avg)	\$300 (avg)	\$14,000 (avg)
		Large~ \$67,000
		Largest~\$585,000

The volumetric approach is preferred in the electricity sector as consistent with the system benefits for which all other electricity conservation is paid for by users.

Rate impacts are modest, representing about a 0.3% increase in all sectors



MINISTRY OF ENERGY AND INFRASTRUCTURE

Issue 2: Cash flow

- Provincial accounting rules require the full amount of charges for FY09/10 to be remitted no later than July 31, 2010.
- Utilities will begin collecting from customers roughly 3 months after the regulation is passed due to the necessary lead time to change utility billing systems.
- To meet the July 31, 2010 accounting rule, collections from customers must precede remittance of the funds to the government or otherwise the utility will incur a negative cash flow by remitting funds to government before collecting from customers (something utilities oppose).
- Similar cash flow issues in the electricity area are mitigated due to the lower amounts.

STATUS

- MEI staff is seeking input to assess the tolerance to bill increases (particularly in the residential sector) to inform the decision on collection period (between 4 and 12 months)
- Two options presented in next slide



MINISTRY OF ENERGY AND INFRASTRUCTURE

Cash flow options

- The shorter the collection period used to recover MEI's charge, the higher the amount billed each period. For example (residential sector):

Higher bill impact: Utilities could collect in 4 months

- Under this option, utilities recover fairly rapidly (in 4 months which could be April, May, June, July which are lower gas billing months) and begin the new year's recovery cycle after.
 - Under Apportionment Option 1, each residential bill would increase by about \$2.50. Industrial impact would vary but would be as high as \$0.5M per monthly bill;
 - Under Apportionment Option 2, each residential bill adds \$6.25. Industrial impact would vary but would be as high as \$25,000 per monthly bill.

Moderate bill impact: Utilities could collect in 12 months.

- Under this option, the new year's recovery cycle overlaps with the current year's. Utilities "catch up" over 4 years, after which collections from ratepayers precede remittances.
 - Under Apportionment Option 1, each residential bill would increase by about \$1. Industrial impact would vary but would be as high as \$150,000 to \$200,000 per monthly bill;
 - Under Apportionment Option 2, each residential bill would increase by about \$2. Industrial impact would vary but would be as high as \$8,333 per monthly bill.



MINISTRY OF ENERGY AND INFRASTRUCTURE

Issue 3: Bill presentment

- In order to control how this charges is presented to customers, MEI will amend existing regulation that prescribes the format and content of electricity bills for **residential** electricity customers. This is not the case for all other electricity customers or natural gas customers.
- MEI expects that all gas bills will show the charge separate from all other charges.

SUMMARY TABLE (SEE NEXT PAGE FOR DETAILS)

Residential electricity customers	All other electricity customers	Natural gas customers
▪ Via regulation, MEI is able to dictate how residential electricity bills are presented. ▪ As a result, the cost recovery charge can be added to the existing regulatory charges line-item and not be identified separately. ▪ This would be justified given its relatively small size and with the aim of maintaining the level of readability of the current bill structure.	▪ The format of the bill is at the distributors' discretion. ▪ The Electricity Distributors' Association has indicated that distributors are likely to identify this as a separate line item.	▪ The format of the bill is at the distributors' discretion with no regulatory authority over it. ▪ Enbridge and Union have indicated that they will identify this charge as a separate line item. ▪ They are both willing to work with MEI on what text should be used to describe the charge.

11



MINISTRY OF ENERGY AND INFRASTRUCTURE

Sample Bills

[illegible]



MINISTRY OF ENERGY AND INFRASTRUCTURE

Sample Bills

Electricity																													
Residential	All others																												
Charges will not show but will be included under the regulatory label	New line item would be added, likely as shown but at LDC discretion																												
Commercial bill for illustration only Your Electricity Charges <table> <tr> <td>Electricity</td><td>69.54</td></tr> <tr> <td>1220.000 KWH @ 5.700 cents/KWH</td><td></td></tr> <tr> <td>947.033 KWH @ 5.600 cents/KWH</td><td>56.10</td></tr> <tr> <td>Delivery</td><td>77.15</td></tr> <tr> <td>Regulatory</td><td>12.00</td></tr> <tr> <td>Debt Retirement Charge</td><td>11.92</td></tr> <tr> <td>Your Total Electricity Charges</td><td>206.71</td></tr> <tr> <td>Ontario Conservation Charge</td><td></td></tr> <tr> <td>G.S.T. (0.5% Registration #96718-27 RT0001)</td><td>10.33</td></tr> <tr> <td>Your previous charges</td><td></td></tr> <tr> <td>Amount of last bill</td><td>234.04</td></tr> <tr> <td>Total Payments-Thank you</td><td>234.04</td></tr> <tr> <td>Balance Forward</td><td>0.00</td></tr> <tr> <td>Amount to be Withdrawn Aug 16 2009</td><td>\$217.04</td></tr> </table> Compare your daily usage Usage (KWH) 11 MAY 09 12 MAY 09 13 MAY 09 14 MAY 09 10 20 30 40 50 60 Every minute of every day someone in Canada needs blood. Call 1-818-2DONATE or visit www.blood.ca.		Electricity	69.54	1220.000 KWH @ 5.700 cents/KWH		947.033 KWH @ 5.600 cents/KWH	56.10	Delivery	77.15	Regulatory	12.00	Debt Retirement Charge	11.92	Your Total Electricity Charges	206.71	Ontario Conservation Charge		G.S.T. (0.5% Registration #96718-27 RT0001)	10.33	Your previous charges		Amount of last bill	234.04	Total Payments-Thank you	234.04	Balance Forward	0.00	Amount to be Withdrawn Aug 16 2009	\$217.04
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Amount to be Withdrawn Aug 16 2009	\$217.04																												



MINISTRY OF ENERGY AND INFRASTRUCTURE

Decisions and Next steps

- Following items require decisions/agreement in order to prepare regulations:
 - Which apportionment methodology should be chosen for gas?
 - Is there a preference for compressing the collection over a short period or have the collections spread out longer, financed and cost recovered by the Utilities?
 - Is there any concern with the bill presentment as described?
- Next steps
 - Finalize regulation following agreement on direction – December
 - Communicate decisions to key stakeholders (OEB, Enbridge/Union, IGUA, EDA)
 - Finalize regulation (Jan LRC date)



MINISTRY OF ENERGY AND INFRASTRUCTURE

Timeline

December	TASK	LRC DATES
14	Write Regulation (4 weeks)	
21		
28		
January		
4		
11		
18	Ministry Approval of regulation (1 week)	January 18. Material to
25	LRC and Cabinet Approval (1 week)	Minister January 4
February		
1	OEB assessment preparation (1 week)	
8	Utility computer systems changes (10 weeks)	February 8. Material to
	Utility commences recovery- April 19, 2010	Minister January 25
	(For February 8 LRC, May 3, 2010)	

Ministry of the
Attorney General
Constitutional Law Branch

720 Bay Street, 4th Floor
Toronto ON M7A 2S9

Tel.: (416) 326-0131
Fax: (416) 326-4015
arif.virani@ontario.ca

Ministère du
Procureur général
Direction du droit constitutionnel

4^o étage, 720 rue Bay
Toronto ON M7A 2S9

Tél.: (416) 326-0131
Télé.: (416) 326-4015
arif.virani@ontario.ca



Via e-mail

December 23, 2010

Mr. Robert Warren
Weir Foulds
Suite 1600, P. O. Box 480
130 King St. W.
Toronto, ON
M5X 1J5

Dear Mr. Warren:

RE: Motion by the Consumer's Council of Canada ("CCC") and Aubrey LeBlanc in relation to s. 26.1 of the *Ontario Energy Board Act, 1998* (the "Act") and Ontario Regulation 66/10

Board File No.: EB-2010-0184

Attorney General of Ontario, Response to matters taken Under Advisement from the Cross-Examination of the Government's Witness

Please find enclosed the Attorney General of Ontario's Response to questions JT 1.6 and 1.7 taken under advisement from the cross-examination of the Government's witness, which took place on November 16, 2010. This letter concludes the Attorney General's full response to all matters undertaken/taken under advisement from the cross-examination.

Yours truly,

Arif Virani
Counsel

cc: Remaining Intervenors (by e-mail)

**RESPONSE TO MATTERS TAKEN UNDER ADVISEMENT, FROM THE CROSS-
EXAMINATION OF THE GOVERNMENT'S WITNESS, NOV. 16, 2010**

Number	
JT 1.6 Under Adviseement: 1.6 To take under adviseement whether to provide any written proxy for a business case underlying O. Reg. 66/10. and	Transcript p. 82, line 28, p.83, lines 1-13
JT 1.7	1.7 To take under adviseement whether to provide a regulatory impact assessment or proxy prepared in connection with the O. Reg. 66/10. Transcript, p.83, lines 27-28, p.84, lines 1-9 Response: Relevant material enclosed. See Exhibits 1, 2 and 3. Relevant material includes documents pertaining to the ultimate decision taken by Government which is the subject of the constitutional challenge. Policy options, including the option of recovering costs against natural gas utilities/ratepayers and recovering costs for programs other than HESP or OSTHI, considered but never implemented by the Government, are not relevant. Policy options are only germane to a s.1 analysis when a constitutional challenge is initiated under the <i>Charter</i>, as opposed to the instant challenge brought under the division of powers. When determining whether a levy constitutes a regulatory charge <i>intra vires</i> the province, or an unconstitutional indirect tax, the legal inquiry is framed by the jurisprudential test set out by the Supreme Court in <i>Westbank</i> [1999] 2 S.C.R. 134 and refined in <i>620 Connaught</i> [2008] 1 S.C.R. 131. The criteria in the legal test are measured against the levy entrenched in the legislative scheme itself—an examination of the policy options considered but never implemented in the legislation is neither relevant nor appropriate to the reviewing court's analysis: <i>Confederation des syndicats nationaux</i> [2008] 3 S.C.R. 511.

The enclosed documents have been redacted to exclude: material irrelevant to the constitutional challenge to s.26.1 and 26.2 of the OEBA, and O. Reg. 66/10 thereto; material irrelevant to the jurisprudential test relating to whether a levy constitutes an *intra vires* regulatory charge, and; material covered under solicitor-client privilege.

Exhibit 1 (Form)

Application and Report to Treasury Board/Management Board of Cabinet

Exhibit 2 (Note)

Ministry of Energy and Infrastructure: MB 20 for MEI's Conservation Cost Recovery from Electricity Utilities and the IESO

Exhibit 3 (Form)

Legislation and Regulations Committee: Ministry Approval Form

Application and Report to Treasury Board/Management Board of Cabinet
(Refer to instructions on next page)

1. MINISTRY OF ENERGY AND INFRASTRUCTURE		2. MINISTRY LOG # 2009-10 -02		3. TB/MBC LOG #					
4. TYPE OF REQUEST: Revenue									
5. PURPOSE OF REQUEST: The Ministry of Energy and Infrastructure is requesting approval from TB/MBC to; 1) proceed to LRC with a regulation on February 22nd that will enable the cost recovery of MEI's conservation programs from electricity rate payers; 2) the change in cost recovery mechanism and a revised revenue target in the amount of \$53.695M in 2009-10; 3) Note that MEI will fully offset the remaining revenue shortfall in 2009-10 through savings identified in the third quarter report;									
6. FINANCIAL DETAILS		(\$ Millions)							
		Current Year		Year 2		Years 3		Mature In	
		2009-10		2010-11		2011-12			
		Operating	Capital	Operating	Capital	Operating	Capital	Operating	Capital
A. Program Current Base	Expense								
	Asset								
B. Program Request (change from existing base)	Expense								
	Asset								
C. Available for Offset	Expense								
	Asset								
D. Net Impact On Program Allocation (B-C)	Expense								
	Asset								
E. Revenue Implications		53.6950							
		Current Year	Year 2	Year 3	Mature In				
7. IMPACT ON FTE LIMIT		2009-10	2010-11	2011-12					
A. Program Current Base FTE Limit									
B. Program FTEs Request									
C. Available FTE Offset									
D. Net impact on FTE Limit (B-C)									
E. Change to Ministry Salaries & Wages Allocation (included in the Program Request (\$ Millions))									
8. OTHER DECISION FACTORS			Y/N	EXPLANATION					
A. Consistent with Government Priorities and Results (If Yes identify key Result(s) - include details in submission)			Y	Better Health, Jobs and Prosperity					
B. Policy approval (If yes Identify policy committee and date approved)			Y	The Ministry is seeking LRC approval on February 22, 2010					
C. Key Performance Risks (If yes provide details in submission)			N						
D. Impact on other Ministries (if yes - include sign-off date, include resources impact in submission)			N	Ministries:					
E. Impact on the Fiscal Plan (if yes provide details in submission)			N						
9. AUTHORIZATION /DATE									
Signature of Minister		Day/Month/Year		Signature of Deputy Minister					
				Day/Month/Year					

Application and Report to Treasury Board/Management Board of Cabinet

Administrative Data for Current year (relates to 6C and 6D from page.1).

Vote & Item	Standard Account	Ministry Request (\$ Millions)				
		Holdback/ Release (A)	Treasury Board Order (B)	Increase (C)	(Decrease) (D)	Total (E = B+C+D)
2902/01	Salaries & Wages					
	Employee Benefits					
	Transportation & Communications					
	Services					
	Supplies and Equipment					
	Transfer Payments					
	Other Transactions					
	Recoveries					
	Other (Specify)					
	ITEM TOTAL					
	Salaries & Wages					
	Employee Benefits					
	Transportation & Communications					
	Services					
	Supplies and Equipment					
	Transfer Payments					
	Other Transactions					
	Recoveries					
	Other (Specify)					
MINISTRY SUMMARY	Salaries & Wages					
	Employee Benefits					
	Transportation & Communications					
	Services					
	Supplies and Equipment					
	Transfer Payments					
	Other Transactions					
	Recoveries					
	Other (Specify)					
	MINISTRY TOTAL					

As amended

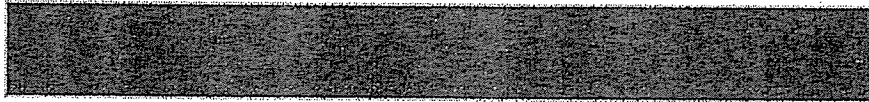
JT 1.6 + 1.7, Exhibit ②

**MINISTRY OF ENERGY AND INFRASTRUCTURE
MB 20 FOR MEI'S CONSERVATION COST RECOVERY FROM
ELECTRICITY UTILITIES AND THE IESO**

1.0 MINISTRY REQUEST

The Ministry of Energy and Infrastructure (MEI) is requesting Treasury Board/Management of Cabinet (TB/MBC) approval to proceed to Legislation and Regulation Committee on February 22, 2010 with a regulation to allow the partial cost recovery of MEI's conservation programs from the electricity utilities; there would be no cost recovery from gas utilities.

MEI also seeking TB/MBC approval for a reduction in the amount of revenue collected in 2009-10. MEI is proposing to change its cost recovery mechanism to collect \$53.695M from electricity utilities only. This would result in a decrease of revenue from the \$142.8M minuted in the 2009-10 RbP. The ministry is noting however that the revenue shortfall in 2009-10 would be fully offset from within MEI's savings identified through the third quarter report.



2.0 BACKGROUND

On May 14, 2009 the *Green Energy and Green Economy Act* (GEA), received Royal Assent.

The GEA has the following key elements:

- Establishing Ontario as a leading jurisdiction for renewable energy
- Creating a conservation culture within government and broader society
- Expanding and supporting economic investment in a "green economy"

The goals of the GEA are to accelerate the development and delivery of renewable energy and conservation, stimulate investment and innovation, and support the creation of new, green jobs.

Schedule D, Section 6 of the Act amends the *Ontario Energy Board Act 1998*, allowing the Board to assess prescribed persons or classes of persons for expenses incurred and expenditures made by the Ministry of Energy and Infrastructure in respect of conservation programs or renewable energy programs provided (section 26.1). For the

February 2010

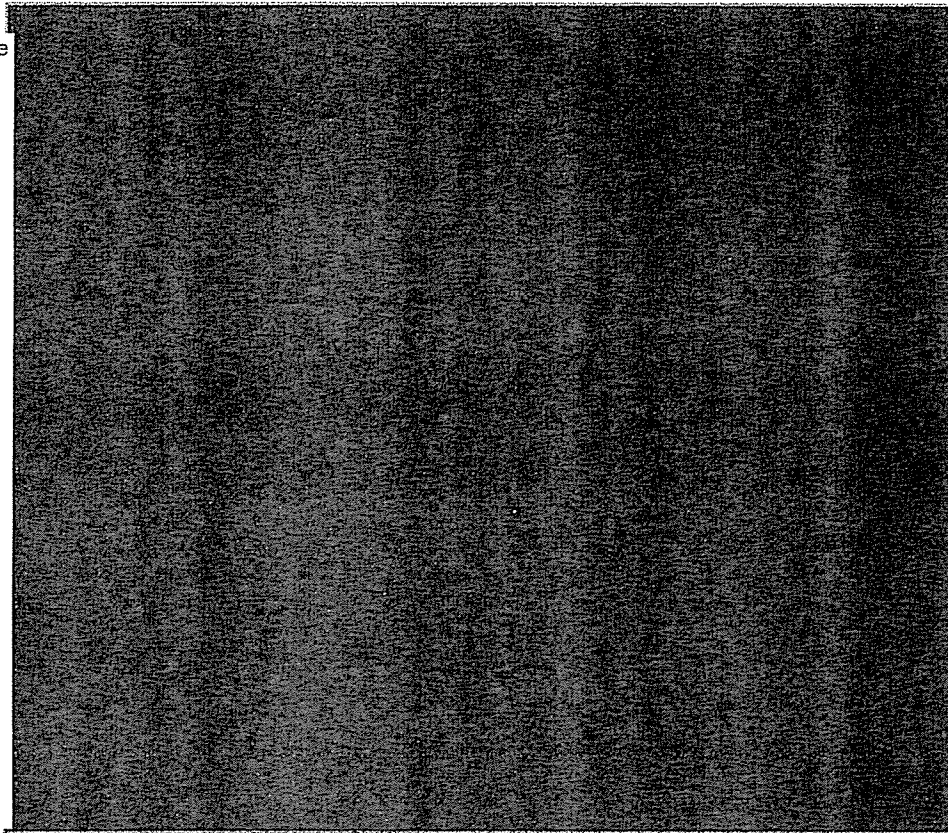
Confidential

page 1

purpose of the Financial Administration Act, Board assessments under section 26.1 are deemed to be money paid to Ontario for special purposes (section 26.2), and will be placed into a special purpose account.

Through the 2009-10 and 2010-11 RbP process, and the quarterly reports, the ministry has noted its intention to recover a significant portion of the cost of conservation programs it delivers from electricity and gas utilities. Electricity and gas utilities are expected to further recover these amounts from their ratepayers through a rate increase expected to be approved by the Ontario Energy Board.

Solicitor-Client Privilege
- 3 paragraphs -
starting after first
sentence



It should be noted that the original recovery of \$148M minute in the 2009-10 RbP was derived from a volumetric based approach of MEI's conservation programs for electricity and gas utilities.

February 2010

Confidential

page 2

3.0 PROPOSED COURSE OF ACTION

Solicitor-Client Privilege
- first paragraph

OPTION 1: Recovery from Electricity Utilities and the IESO Only- RECOMMENDED-

For fiscal 2009-10 the ministry could regulate the collection of a total amount of \$53.695M from electricity utilities and the IESO and not proceed with collection from the gas. The revenue shortfall expected from exclusion of the gas sector could be fully offset from MEI savings that were identified through the Ministry's third quarter report, and will have no fiscal impact.

Solicitor-Client Privilege
- "Pros" paragraph

OPTION 2: No Cost Recovery

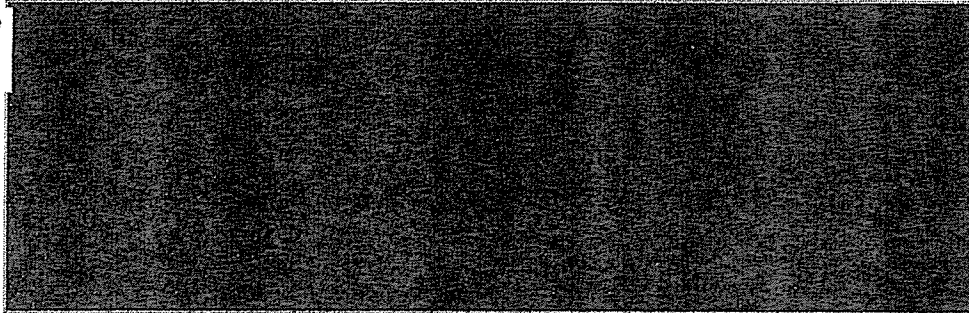
The ministry could forego all recovery in fiscal 2009-10. A portion of the minuted revenue that was expected to be recovered in this fiscal year could be partially offset from MEI savings that were identified through the third quarter report, however there would still be a fiscal impact of \$38.8M in 2009-10.

Solicitor-Client Privilege
- first sentence of "Pros"
paragraph

OPTION 3: Recovery from the Electricity and Gas Utilities using A Volumetric Based Approach

The ministry could recover \$53.695M from the electricity sector and \$110.526M from the gas sector using the volumetric apportionment method for both.

Solicitor-Client Privilege
- second sentence of
"Pros" paragraph



The ministry is recommending to proceed with Option 1, recovery of \$53.695M in 2009-10 from electricity utilities. This would require the ministry to proceed to LRC with a draft regulation on February 22nd.



4.0 PERFORMANCE MEASURES

MEI's conservation programs will contribute to achieving two existing performance measures for MEI:

- Reducing peak electricity demand by 2025 by 6300 MW, through energy conservation.
- Increasing energy saved by consumers through increased use of energy efficient products, 22.6 petajoules by 2012-13.

5.0 FINANCIAL IMPLICATIONS

Government Fiscal Impact:

As shown in the table below, the third option would have the larger recovery for the government; however it is the least favorable option from a policy standpoint. MEI's preferred option and recommendation, has a no fiscal impact and reduced risk from a policy perspective.

(\$ Millions)	Minuted Recovery 2009-10 RbP	Proposed Recovery from Rate Base	Savings Identified in Q3	Estimated Variance from Original Revenue Forecast
Option 1: Recovery from the Electricity Utilities and IESO	142.8	53.7	104.0	(14.9)
Option 2: No Cost Recovery	142.8	-	104.0	(38.8)
Option 3: Recovery from the Electricity and Gas Utilities using a Volumetric Based Approach	142.8	184.2	104.0	(22.4)

Consumer Impact:

For a typical residential customer, Option 1 is estimated to add about \$3/year (about 0.3% bill increase) while a typical commercial customer would see an additional charge of about \$300/year (both spread among the number of billing periods). A typical industrial consumer would pay closer to \$14,000/year (a typical large industrial consumer would pay closer to \$70,000/year).

Small volume electricity customers (e.g. residential customers) would not see a discrete charge on their bill (it would be part of the existing "Regulatory" line in the bill). Commercial and industrial electricity customers would, at the utilities' discretion, see this as a discrete line item in their bills.

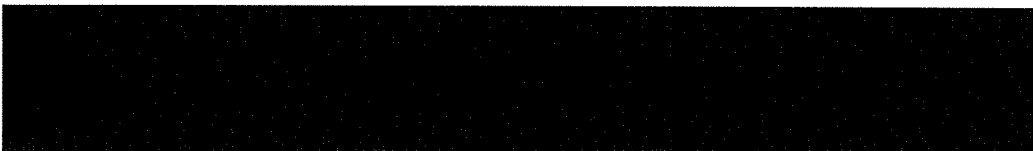
6.0 RECOMMENDATION

The ministry is requesting that Treasury Board/Management Board of Cabinet:

RECOMMEND for Cabinet approval the Ontario Energy Board regulation to allow collection of cost recovery from electricity utilities for fiscal 2009-10.

APPROVE the change in cost recovery mechanism and a revised revenue target of \$53.695M in 2009-10.

NOTE that MEI will fully offset the remaining recovery in 2009-10 from within, using savings that were identified through the ministry's third quarter report.



As amended

TT 1.6 + 1.7, Exhibit ③


**LEGISLATION AND REGULATIONS COMMITTEE:
MINISTRY APPROVAL FORM**

 LRC Tracking #: REG-8834
 EVista Tracking #: SUB-REG-2009-09146

MINISTRY OF ENERGY AND INFRASTRUCTURE
**Assessments for Ministry of Energy and Infrastructure
conservation and renewable energy program costs**

Regulation; Order-in-council

Profile at a Glance
Priority: *Consequential to commitment*
Public Interest: *Medium*
Key Stakeholder Interest: *High*
New Costs/Burdens: *Yes for Stakeholders/ No for Government*
New Savings/Opportunities: *No for Stakeholders/ Yes for Government*
Proposed Items for Review

1. New regulation under the *Ontario Energy Board Act, 1998*, titled "Assessments for Ministry of Energy and Infrastructure conservation and renewable energy program costs".
2. Modification of existing regulation 275/04 under the *Ontario Energy Board Act, 1998*.
3. Order-in-council under the *Green Energy and Green Economy Act, 2009*.

Approvals required prior to LRC

	Committee and date	Cabinet Date	No approval needed
Policy	CCOEF, Dec. 17, 2008	Cabinet, Dec. 17, 2008	
TB/ MBC	(Get info from Corp-RbP approval)		*

**Note appendix here if including an appendix that addresses costs, or if a Budget commitment.*

Deputy Minister

Date

Minister

Date



s. 1

Proposal and Context

- The Ministry of Energy and Infrastructure ("MEI") has proposed to recover certain costs of delivering certain MEI energy conservation and renewables programs ("programs") from electricity ratepayers.
- The same programs were funded up to Fiscal Year 2009/2010 using MEI's budgetary appropriations.

s. 2

Approach and Intended Outcomes

- MEI is proposing a regulation under the *Ontario Energy Board Act* which sets the amounts to be collected, as well as the timing, collection method, and recovery method for the funds.
- Costs would be recovered for the following MEI programs for FY 2009/2010.
 - Home Energy Savings Program (HESP): Provides incentives for energy audits and for installation of energy conservation measures to improve residential home energy efficiency.
 - Ontario Solar Thermal Heating Initiative (OSTHI): Subsidizes the installation of large (commercial) solar air and solar water roofs. The first are generally used to substitute for natural gas heating in warehouses, barns, etc; while the solar water is used to pre-heat water.
- Program administration costs (staffing, overheads and marketing) and costs associated with displacing heating oil and propane are not included as recoverable costs
- The amounts to be recovered from electricity ratepayers for each of the programs with respect to program expenses in FY 09/10 is show below:

PROGRAM	Recoverable Amount- Electricity
HESP	\$53,266,344
OSTHI	\$428,965
Total	\$53,695,310

- These programs affect both electricity and natural gas users, as well as users of other fuels. However, for the current fiscal year, only the electricity portion of the funding will be recovered.

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- Program costs will be recovered from electricity ratepayers in proportion to the benefits that the programs deliver to the electricity ratepayers.
- The funding needed from MEI's appropriations will be reduced by a similar amount to that collected from ratepayers.
- The *Green Energy and Green Economy Act, 2009* provides enabling authority for a regulation of this nature by amending the *Ontario Energy Board Act*. Therefore regulation is the appropriate instrument to implement the proposed changes:

Solicitor-Client Privilege -
fourth bullet

- Regulation 275/04 is an existing regulation under the *Ontario Energy Board Act, 1998*, which sets the format and presentation of electricity bills for low volume consumers. This regulation is also being amended to incorporate further changes pertaining to the presentation of the new charge in low volume electricity bills.

s. 3 Direction and Urgency

- Cabinet policy minute of December 17, 2008 included specific direction to "align program funding so MEI can recover appropriate costs for conservation program delivery from the rate base in proportion to electricity and natural gas savings". Enabling authority was subsequently included in the *Green Energy and Green Economy Act, 2009*, which received Royal Assent on May 14, 2009.
- The proposed regulation affects ministry appropriations for the current FY closing March 31, 2010. The Ministry's 2009/10 RbP assumed that cost recovery of MEI conservation programs from ratepayers would be in place for the current FY. The amounts stated in the proposed regulation must be recovered in the near term in order to comply with ministry obligations to Treasury Board whereby these amounts would be recovered in FY 09/10.

s. 4 Impact Assessment and Costs

- The proposed regulation establishes an additional obligation on electricity ratepayers in Ontario, apportioned among residential, commercial and industrial ratepayers. For the current fiscal year, this obligation is estimated at \$53,695,310.
- Conservation Programs which reduce the overall load and throughput in the system benefit ratepayers since they increase reliability, decrease

CONFIDENTIAL CABINET DOCUMENT

3 of 6



maintenance costs, and decrease commodity costs, as well as avoiding capital expenses to build new plant.

- The benefit accruing to electricity ratepayers was estimated based on how much of each fuel was displaced by the conservation measures undertaken. In principle, a conservation measure which reduces or displaces electricity consumption benefits the electricity system and ratepayers. Thus, the apportionment of the charge to electricity and gas ratepayers was estimated based on analysis of how much electricity and gas are displaced.
- Average charges to ratepayers for the current fiscal year are estimated as follows:
 - For residential electricity ratepayers about \$3/year.
 - For commercial ratepayers about \$300/year electricity.
 - For typical industrial ratepayers about \$14,000/year (a typical large industrial would be closer to \$70,000).
 - Additional costs associated with the implementation of the proposal, including computer systems modifications, administration costs, etc, will be recovered from electricity ratepayers independently of this regulation, and via an application to the Ontario Energy Board.
- A decision not to proceed with this regulation will require that the foregone revenues be offset from elsewhere within government.
- The funds will continue to be used to deliver MEI energy conservation and renewable programs, making it possible for Ontarians to conserve energy while reducing energy costs and greenhouse gas emissions.

s. 5 Implementation

- By approving the proposed regulation, the collection process would be implemented. MEI, the Ontario Energy Board, and electricity distributors would be expected to participate in the implementation.
- This process is explained in the regulation. It consists of several steps, starting with MEI requiring the Ontario Energy Board to establish an assessment from electricity utilities. Utilities are then regulated to remit the amounts in the assessment to the government's Consolidated Revenue Fund under a Special Purpose Account. Utilities are permitted to recover the remitted amounts from their ratepayers.
- Expenses related to the conservation and renewables programs being funded started April 1, 2009. Full collection of the amounts from electricity is required by July 30, 2010 to meet government accounting rules related to the administration of the Special Purpose Account.
- The order-in council provides for the relevant amendments to the *Ontario Energy Board Act* to come into force on March 1, 2010. It is expected that the regulation will be filed shortly after this, and come into force immediately upon filing.

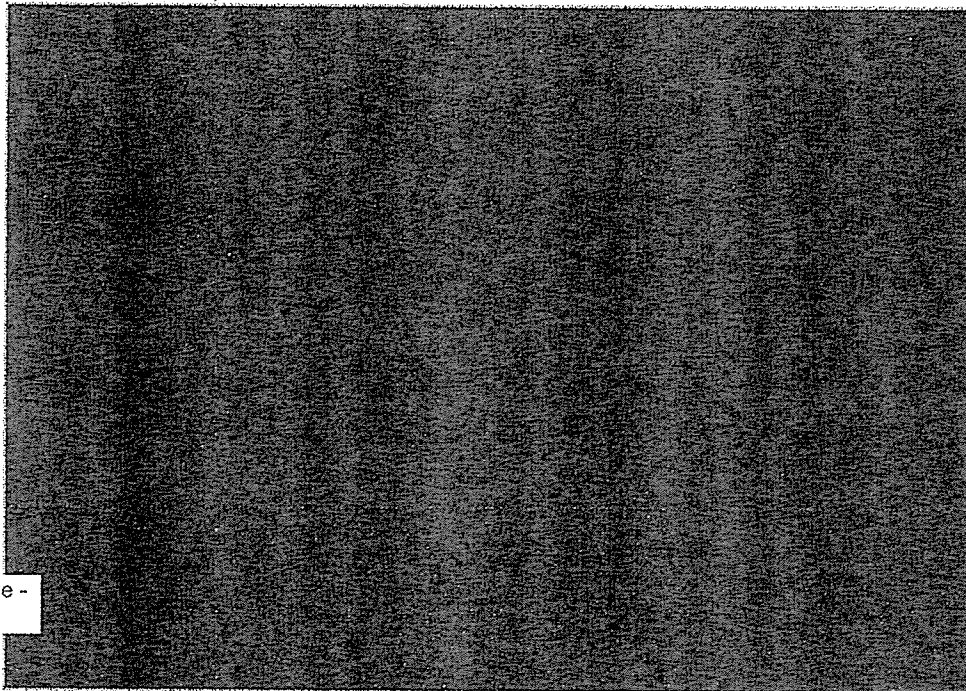


- For low volume electricity consumers, the proposed amendment to regulation 275/04 will mean that the new charge will be added to the 'Regulatory' amounts already in place. Other electricity consumers, and all gas consumers, on the other hand, will be billed by their utilities following their own presentation design.

**s. 6 Delivery and Results
Tracking**

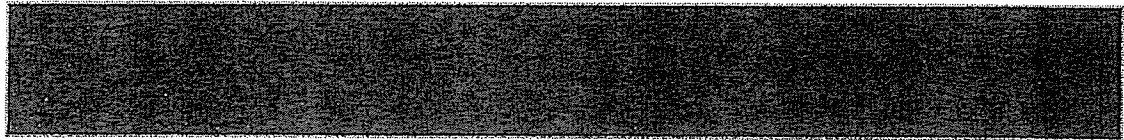
- The success of this proposal will be measured by achieving the collection of the funds. The ministry must have approval and registration of the regulation before the end of the fiscal year to be able to collect the funds.

**s. 7 Stakeholder
Consultations**

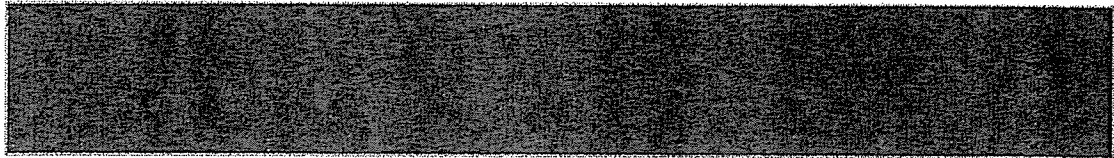


Solicitor-Client Privilege -
last bullet

**s. 8 Other Jurisdictions and
Harmonization**



s. 9 Communications



**s. 10 Contacts and
Appendices**

Contacts		
	Name	Phone Number
Ministry Policy/Program	Barry Beale	416-326-4551
Ministry Legal	James Rehob	416-325-6676
Ministry Communications	Eric Pelletier	416-325-1810
Assistant or Deputy Minister's Office	Sue Lo	416-327-8552
Cabinet Office Policy	Melissa Faber	416-325-9140

Ministry of the
Attorney General
Constitutional Law Branch

Ministère du
Procureur général
Direction du droit constitutionnel

720 Bay Street, 4th Floor
Toronto ON M7A 2S9

Tel: (416) 326-0131
Fax: (416) 326-4015
arif.virani@ontario.ca

4^e étage, 720 rue Bay
Toronto ON M7A 2S9

Tél.: (416) 326-0131
Télé.: (416) 326-4015
arif.virani@ontario.ca



BY E-MAIL and HAND DELIVERY

June 30, 2011

Ms. Kirsten Walli, Board Secretary
Mr. Michael Millar, Legal Counsel
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli and Mr. Millar:

RE: Motion by the Consumer's Council of Canada ("CCC") and Aubrey LeBlanc in relation to s.26.1 of the *Ontario Energy Board Act, 1998* ("Act") and Ontario Regulation 66/10

Board File No.: EB-2010-0184

Decision and Order, June 8, 2011 (re: CCC Interlocutory Motion for production of unredacted materials)

We acknowledge receipt of the Board's Procedural Order No. 10, dated June 13, 2011, extending the date of compliance with the above-noted "Decision and Order" to June 30, 2011.

Please note that counsel has been instructed not to seek an appeal of the Board's Decision and Order, dated June 8, 2011. Copies of those documents required to be unredacted in accordance with the Board's Decision and Order are attached herein.

We respectfully note that the Board's Decision and Order requires a minor clarification. As regards the Government's response to JT 1.6 and 1.7, Exhibit 3 "Legislation and Regulations Committee: Ministry Approval Form", the Board's Decision and Order inadvertently fails to address the redactions at page 6; under the headings "s.8 Other Jurisdictions and Harmonization" and "s.9 Communications".

With respect to the re-attendance of the Government's witness for additional cross-examination, please be advised that Mr. Beale is available for cross-examination on July 20-22 and July 25-29, 2011.

Yours very truly,



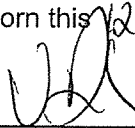
Arif Virani
Counsel

encl.

cc: Robert Warren, Counsel for the Moving Parties, Consumer's Council of Canada
& Aubrey LeBlanc (by email only)

All Intervenors (by email only)

This is **Exhibit "X"**
to the Affidavit of Jack Hughes
sworn this 12 day of November, 2010

A handwritten signature in black ink, appearing to be 'JH' or similar, written over a horizontal line.

A Commissioner, etc.



No. 63

N° 63

ISSN 1180-2987

Legislative Assembly
of Ontario

Second Session, 39th Parliament

Assemblée législative
de l'Ontario

Deuxième session, 39^e législature

**Official Report
of Debates
(Hansard)**

**Journal
des débats
(Hansard)**

Monday 1 November 2010

Lundi 1^{er} novembre 2010

Speaker
Honourable Steve Peters

Président
L'honorable Steve Peters

Clerk
Deborah Deller

Greffière
Deborah Deller

LEGISLATIVE ASSEMBLY OF ONTARIO

Monday 1 November 2010

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

Lundi 1^{er} novembre 2010

The House met at 1030.

The Speaker (Hon. Steve Peters): Good morning. Please remain standing for the Lord's Prayer, followed by a moment of silence for inner thought and personal reflection.

Prayers.

INTRODUCTION OF VISITORS

Hon. John Milloy: I know members in this House are probably very familiar with Skills Canada, an organization that promotes trades among young people. One of the ways they do that is through a competition. Skills Canada Ontario is represented here today at Queen's Park, as well as the winners of the national Skills Canada competition that was held in Waterloo. These young individuals will be going on to represent Canada at the international skills competition in London, England.

I'd like to recognize them here today. They're over in the gallery. We have, first of all, Ian Cunningham, a director with Skills Canada Ontario, and Gail Smyth, executive director of Skills Canada. Then we have the student competitors: Tyler Hackney, Jonathan Sinke, Ryan Gomes, Benjamin Church, Adrian Schut and Tom Middlebro. We welcome them to Queen's Park today.

There's a reception tonight for Skills Canada-Ontario at Stop 33 at the Sutton Place. All members are welcome to celebrate Ontario's champions.

Mr. Ernie Hardeman: It gives me great pleasure to rise today to welcome the family of today's page captain, Eric O'Brien, from the great riding of Oxford. Here with us today at Queen's Park in the members' gallery are his mother, Kristine Hamilton, his father, Steve O'Brien, his brother Liam and his cousin Evan Samson. I want to welcome them to Queen's Park today.

Hon. Carol Mitchell: I'm very pleased to introduce Elle Doherty's father and sister, Lonny and Maya. Elle is our page from the beautiful riding of Huron-Bruce.

I also have in attendance my nephew Justin Jain and my daughter Jasmine Mitchell.

Welcome, all. It's a great day for Huron-Bruce.

Mr. Steve Clark: I'd like to introduce Lucas DaSilva, who is here to watch question period on his day off from school today. Welcome, Lucas.

Mr. Charles Sousa: I'd like to take an opportunity to introduce His Worship Fernando Campos, mayor of Boticas in Tras Montes, in the northern region of Portugal. He's joined by his wife, Dona Graca, as well as Mr. Abel Barroso and Aldina Barroso. They're joined by Mr.

John Goncalves and Mrs. Idila Goncalves, who are the organizers of their visit, together with Mr. Raimundo Favas and Lucia Santos, long-time volunteers in our community. They were here this weekend to support Santa Casa da Misericordia de Boticas, and they were joined by Minister Peter Fonseca as well.

Remarks in Portuguese.

ORAL QUESTIONS

TAXATION

Mr. Tim Hudak: My question is to the Minister of Energy. Minister, families in Ontario woke up this morning to find out that you've turned time-of-use smart meters on their heads; now they're being charged the highest use for energy between 7 a.m. to 11 a.m. and 5 p.m. to 9 p.m. Obviously, it will hit families quite hard.

The additional surprise, we understand, that you have in store for Ontario families is an expansion of your already hidden and greedy hydro tax, which cost consumers some \$53 million last year.

Is it true, Minister, that you plan on expanding this greedy hydro tax to natural gas, just as we're heading into the winter heating season?

Hon. Brad Duguid: As usual, the Leader of the Opposition is misinformed. The Ontario Energy Board came out with the regulated price plan for consumers. It was very clear, and it was just a number of weeks ago.

Time-of-use pricing for consumers on smart meters was adjusted as follows, and I suggest the Leader of the Opposition take note: Off-peak price decreases went from 5.3 cents to 5.1 cents per kilowatt hour; mid-peak did go up from 8 cents to 8.1 cents per kilowatt hour; on-peak prices remain unchanged. The estimated price impact for residential consumers on time of use will be a reduction of \$1.21 per month. I recognize that's not a lot, but nonetheless it is a reduction.

One would think that the Leader of the Opposition would recognize the importance of encouraging people to shift off of peak usage; how that saves the—

The Speaker (Hon. Steve Peters): Thank you. Supplementary?

Mr. Tim Hudak: Yet again, another promise by a McGuinty cabinet minister that hydro prices are going down. Quite frankly, families won't believe this promise, because every promise you've made on hydro prices has been broken. They're going through the roof.

Let me put this into perspective, Minister. Now, as we're heading toward the cooler winter season, you're increasing the cost of using energy in the mornings, as families are getting ready to go to school, and in the evenings as the kids come home for dinner and to do their homework. On top of that, in addition to the \$53-million tax grab you had on hydro bills, you're planning on putting this on natural gas. Millions and millions of Ontario families depend on natural gas to heat their homes. Minister, please tell us it's not true that you're going to slap down a brand new tax on natural gas just when the winter season is hitting.

1040

Hon. Brad Duguid: Once again, the Leader of the Opposition is speculating, as he likes to do, trying to use fearmongering to consumers at a time when consumers need transparency. I'm looking forward to bringing forward the long-term energy plan for this province, which will provide that transparency, that certainty, and maybe take away some of the opportunities in which the Leader of the Opposition likes to engage in fearmongering and trying to ensure that consumers in fact don't know what actually is going on around the province.

What I can say is this: The Leader of the Opposition came forward with his own idea not long ago, an idea that he indicated would bring prices down. We've looked into it. His idea of providing options would do nothing but put prices up for consumers right across this province. They would increase administration costs; they would—

The Speaker (Hon. Steve Peters): Thank you. Final supplementary.

Mr. Tim Hudak: I appreciate that the minister says that he's looking forward to bringing forward his long-term energy plan. We're also looking forward to the Leafs finally winning the Stanley Cup. The problem is, we don't know just which one is going to come sooner.

I say to the minister, you are now, with your new smart meter time-of-use rates, these tax machines, actually telling families that they have to have the kids showered and ready for school before 7 a.m. When they get home, I guess they can hang out in the dark until they can do their homework after 9 p.m., with your new rates. And now, Minister, you are planning on bringing in an increase on taxes on natural gas, just as we're hitting the cold winter season.

You're saying that we're speculating; Minister, you gave yourself authority to do so in the legislation. We think you're going to use it. Yes or no: Are you planning another sneaky tax grab on natural gas bills just when we're hitting the winter season?

Hon. Brad Duguid: I'm not going to speculate, as the Leader of the Opposition would want me to do on that, in any way. What I will say is this, and this is the fact: The Leader of the Opposition would try to claim that he's proposing something that would save everybody money. Clearly, we've looked into it. It will not. What he's proposing would create confusion and uncertainty among consumers. What he's proposing would kill the benefits of time-of-use pricing while increasing its costs through

billing system changes and more administration, sinking the investments that we've made in smart meters. What he's proposing would increase the administrative burden on local distribution companies, driving up their costs and forcing them to recover that from consumers.

He says one thing in this Legislature, but when he finally comes out with something, it's very clear that he didn't think it through. The Leader of the Opposition, if we were to listen him today, would be putting up the rates of consumers right across this—

Interjection.

The Speaker (Hon. Steve Peters): Thank you.

The member from Nepean will withdraw the comment she just made, please.

Ms. Lisa MacLeod: Withdrawn.

The Speaker (Hon. Steve Peters): New question.

TAXATION

Mr. Tim Hudak: Back to the Minister of Energy: If your smart meter tax machines were such a good thing, then consumers would choose them. The Ontario PCs believe in giving Ontario families a choice. Whether they want to participate in the program or not, you want to force it down their throats.

But Minister, with all due respect, you seem to be trying to get around my question a bit here. It's a very simple, straightforward question. You have given yourself the authority to impose a new tax on natural gas just as we hit the winter season. Despite your advice to consumers to turn off the air conditioners in November to save on their time-of-use pricing, surely you understand that natural gas usage goes up in the winter time, when it tends to snow and get colder. Let me ask you, Minister, very directly: Will you, yes or no, bring in a new tax on natural gas in the province? Yes or no? Please say no.

Hon. Brad Duguid: I said earlier that all of our initiatives will be made very, very clear in the long-term energy plan. I'm not going to speculate on that idle speculation taking place over there. I can tell you that we have no plans to move forward in that direction, but I'm not going to speculate on that in any way.

What I will say is this: The Leader of the Opposition gets up in his place day in and day out and talks about his concern about rising energy rates, yet when he does come forward with some initiatives, they have the effect of increasing costs to consumers. In the same speech that he moved forward with his so-called option to consumers—and the only option it's going to involve is increasing rates to consumers—he also speculated on nuclear. He said that we should be purchasing nuclear units today. It would have cost us billions more dollars if we had taken his advice to buy nuclear—

The Speaker (Hon. Steve Peters): Thank you. Supplementary?

Mr. Tim Hudak: Perhaps I could, with respect to the minister, ask him to temporarily leave the fantasyland of his last number of questions and deal with the hard realities that Ontario families are facing today.

Under the McGuinty government, hydro bills are going through the roof. They're impacting quite hard on senior citizens and Ontario families. You've added an 8% increase with the HST now on hydro bills in the province. You brought forward a sneaky hydro tax that you have buried in the regulatory charges so it doesn't even appear directly on the bills. You've claimed these things are conservation initiatives, but it goes into the general revenue fund.

All of that is bad enough. All of that is hitting hard on Ontario families today. All I'm asking you is to just say no to another greedy tax grab on natural gas, particularly as we're heading into the winter season. Just say no.

Hon. Brad Duguid: We've been very clear. In a time when we do have to increase investments to ensure that we deliver a strong, reliable and clean energy system, we're doing everything we can to bring those prices down. So let's be very clear about that. We're doing everything we can. We're making sure that our energy partners do everything they can to ensure that whatever increases they need to come forward with, it's only increases that are providing value for money.

We've had to come a long way and we've had to build up this energy system that was left in distress seven years ago when the previous government was not making the important investments in the system, when the previous government was not ensuring, in fact, that we had enough supply to meet the demand of Ontario families. We've had to make important investments to ensure that we provide the strong, reliable and clean energy system that—

The Speaker (Hon. Steve Peters): Thank you. Final supplementary?

Mr. Tim Hudak: Every time that the Premier wants to install another greedy tax grab, he tends to dress it up as an environmental initiative. We saw that with your eco tax grab that would slap a new tax on 9,000 items that families use each and every day, and I'm proud that the Ontario PCs stood on the side of Ontario families and fought that tax and caused you to back down.

Now we're taking up the fight again. We know that you have a plan to bring in an additional tax, not only on hydro bills, which you hide under the regulatory charges, but on natural gas as well. Minister, this is simply unaffordable to Ontario families. They cannot take any more of these hits on their pocketbooks by Premier McGuinty. Please tell us right here, right now, that you are cancelling your plans to slap a new tax on natural gas in the province of Ontario.

Hon. Brad Duguid: Once again, the Leader of the Opposition has no idea what he's talking about. There's no such plan. He's speculating. It's idle speculation. It's the typical fearmongering on hydro rates that's been going on far too long, and that's why I'm looking very much forward to moving forward with our long-term energy plan. Our long-term energy plan—

Interjections.

The Speaker (Hon. Steve Peters): Order. Minister?

Hon. Brad Duguid: They had their chance when they were in power, and what did they leave us? They did not

invest in a strong and modern energy system. They did not invest in a cleaner energy system. They did not invest in reliability. They were preoccupied with selling off hydro assets. Their experimentation with deregulation cost our consumers a billion dollars. Every time I look at my bill and see that debt retirement fund, I see that Leader of the Opposition's face—

The Speaker (Hon. Steve Peters): Thank you. New question.

HYDRO RATES

Ms. Andrea Horwath: My question is for the Minister of Energy. The McGuinty government's new time-of-use hydro rates are kicking in today and families are getting ready to be whacked with another round of hydro bill hikes. Can the minister assure households that every single penny of their sky-high hydro bills is going to be put to good use?

Hon. Brad Duguid: I thank the leader of the opposition for the question. Obviously, when the Ontario Energy Board came out just a few weeks ago and indicated that indeed the regulated price plan would be small and modest decreases for consumers, this is what they said: Off-peak prices will be decreased from 5.3 cents to 5.1 cents. That's a decrease, not an increase, as the Leader of the Opposition, I think, would have people believe. Mid-peak price increases would go up from eight cents to 8.1 cents—a little bit; not very much—and on-peak prices would remain the same. The estimated bill impact for residential consumers of time-of-use would be a reduction of \$1.21 per consumer.

1050

We recognize that that's a modest reduction, but it's a far cry from the fearmongering of the leader of the third party.

We're doing everything we can to ensure that our consumers are getting value for money. We're working very hard with our—

The Speaker (Hon. Steve Peters): Thank you. Supplementary?

Ms. Andrea Horwath: What I specifically asked the minister was: Is every single penny going to be put to good use? That was my question.

Elections Ontario records show that the Ontario Liberal Party accepted thousands of dollars in donations from municipally owned utilities. Essex Power put nearly \$3,000 into Liberal Party coffers, while Thunder Bay Hydro made a donation to the Thunder Bay–Superior North Liberal riding association.

Why are families who are already feeling the squeeze funding the Ontario Liberal Party when they're paying their hydro bills?

Hon. Brad Duguid: The leader of the opposition gets up day after day and criticizes the important investments that we're making to build a strong, reliable and cleaner system of energy. Just a few weeks ago, we took four coal units off of power, something we couldn't have



No. 64

N° 64

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**Legislative Assembly
of Ontario**
Second Session, 39th Parliament

**Assemblée législative
de l'Ontario**
Deuxième session, 39^e législature

**Official Report
of Debates
(Hansard)**

**Journal
des débats
(Hansard)**

Tuesday 2 November 2010

Mardi 2 novembre 2010

Speaker
Honourable Steve Peters

Président
L'honorable Steve Peters

Clerk
Deborah Deller

Greffière
Deborah Deller

ORAL QUESTIONS

TAXATION

Mrs. Christine Elliott: My question is for the Minister of Energy. Yesterday, the Minister of Energy denied that he's planning to expand the \$53-million hidden tax the McGuinty Liberals currently make Ontario families pay for hydro. He said, "We will not be applying those fees to the gas industry nor will we be applying those fees to the electricity industry." But the minister has a track record of backtracking on what he has said about the long-term energy plan and forecast analyses, having them ready for hydro bills for Ontario families by mid-October.

So I have to ask the minister: Are the McGuinty Liberals planning a fee, tax, premium, levy, toll, bill, duty, compulsory contribution or, specifically—and I quote—a "special purpose charge" to hydro or natural gas?

Hon. Brad Duguid: No—

Interjections.

Hon. Brad Duguid: I'm trying to respond, Mr. Speaker, over the hubbub over there. I haven't even started yet, and they're already heckling.

As I said yesterday, no, we're not planning on doing that. And I'll tell you what else we're not planning to do: We're not planning to take us back to where you want to take us when it comes to energy. We're not planning to put the use of coal up 127% like they did when they were in power. Indeed, instead, we're going to be out of coal by 2014, making sure that we have cleaner air and healthier outcomes for our kids and grandkids.

I'll tell you what else we're not going to do. We're not going to kill those 50,000 jobs we're creating in clean energy, jobs that their leader wants to kill. The people of this province need those jobs. That party should come clean—

The Speaker (Hon. Steve Peters): Thank you. Supplementary?

Mrs. Christine Elliott: That's an interesting response and certainly contrary to past actions. In March, the Ontario PC caucus exposed the regulation to create a special purpose charge, also known as a hidden hydro tax. A month later, the C.D. Howe Institute published a report on the hidden tax on hydro and natural gas, which said, "On its face, the levy is a tax." This summer, the Ontario Energy Board released a decision that showed the McGuinty Liberals plan to expand the hidden tax to natural gas next year and were ready to fight for the taxation power.

All these documents call it a tax and say it is coming next year. Suddenly, the minister says that it isn't. What's changed?

Hon. Brad Duguid: What probably should have changed is her supplementary, because she obviously didn't hear my first answer. The answer is no. The answer was no yesterday, it was no last week and it's no

today. You can ask me another supplementary, and the answer is still going to be no.

But I can tell you what we're not going to do. We're not going to kill the 600 jobs that we're creating in Windsor that your leader wants to kill. We're not going to kill the 800 jobs we're creating in Guelph through our Clean Energy Act that your leader wants to kill. We're not going to kill the 1,200 jobs we're creating in Kingston that their party wants to kill, through their lack of support for clean energy in this province. We're not going to kill the 200 jobs in Oakville that we're creating through our clean energy initiatives but that they want to kill. We're not going to kill the 1,000 jobs in Welland.

We're creating jobs in this province. We're building a clean energy economy. It's over their opposition that we're doing it, but we're—

The Speaker (Hon. Steve Peters): Thank you. Final supplementary.

Mrs. Christine Elliott: I certainly heard the minister's response, and I'd like to know why the sudden change of heart, because in its April 22 report, the C.D. Howe Institute points out that the McGuinty Liberals ordered the Ontario Energy Board to collect this tax. It not only said that the OEB levy is likely unconstitutional, but said, "In the event of a successful constitutional challenge ... the province would be under a legal obligation to return the revenues."

Ontario families have already paid the \$53-million hidden hydro tax this year, before the minister suddenly let on that he has had a major change of heart here. When were the minister and the Premier planning to tell Ontario families that they're refunding what they've already paid for this illegal tax?

Hon. Brad Duguid: Once again, the answer is no, and it will continue to be no. But I think maybe what the party opposite needs to start talking to Ontarians about is what their leader is suggesting they want to do. They're talking about this optional time-of-use scheme, which they've been talking about now for a few weeks. We've looked into that, and I tell you what that scheme is going to do: It's going to drive up consumer energy rates. They're trying to put in place a duplicate system of billing that's going to do nothing but increase administration for local distribution companies.

1040

Guess where those administration costs come from. They come from the very ratepayers. They get up day in and day out and talk about the fact that they don't support increases when it comes to energy rates, yet their policies would do just that.

You can't have it both ways. You're either going to support our efforts to build a strong, clean, reliable and affordable system of energy or you're not—

The Speaker (Hon. Steve Peters): Thank you. New question.

TAXATION

Mrs. Christine Elliott: Again to the Minister of Energy and his sudden change of heart: The minister's revelation yesterday that the hidden taxes won't apply to hydro and natural gas is news to energy companies and consumers who are fighting against the taxes at the Ontario Energy Board.

How and when did the Minister of Energy notify them that the McGuinty Liberals are now scrapping the special purpose charges?

Hon. Brad Duguid: Once again, the answer stays no. It was no three questions ago, it's no now, it will be no after her next supplementary, and it will be no after her following question.

We're working very, very hard to ensure that we improve the system of energy that we inherited from them. That system of energy did not have enough supply to meet demand, so we've had to create 8,000 new megawatts of power to ensure that Ontario families would have an energy system they can count on. We've had to improve our transmission and distribution system. We've built over 3,000 kilometres of transmission and distribution. We've upgraded that to ensure our system is more reliable.

We're working very, very hard to clean up our energy production and to get out of coal by 2014.

It would be nice to have the support of the members opposite, but they want to go back to where we were seven years ago. They want to go back—

The Speaker (Hon. Steve Peters): Thank you. Supplementary?

Mrs. Christine Elliott: The minister shifted gears again. He's saying that the charges won't apply to gas and hydro, but the Ontario Energy Board says they will. So does the Consumers Council of Canada, which led a constitutional challenge of this \$53-million charge that's being placed on Ontario consumers. They argue that the hidden hydro tax "meets the classic definition of an indirect tax.... This is general revenue for general use."

The board agreed with them and said, "There is a serious question to be tried" of whether the hidden taxes are constitutional.

As late as August, the energy minister was still fighting tooth and nail for Premier McGuinty's hidden tax. Please tell us, Minister: What changed?

Hon. Brad Duguid: A lot has changed in the last seven years; I can tell you that.

That party, when they were in office, was steadfastly against any initiative that involved conservation. Since the McGuinty government came to office, we, with the people of Ontario, have saved 1,700 megawatts of power over the last seven years. That's a phenomenal increase in terms of conservation initiatives.

We look forward to bringing forward our long-term energy plan, which is going to provide greater stability and certainty when it comes to energy in this province. Unlike those guys, we're no longer planning hour to hour to keep the lights on. What we're doing is we're planning

20 years in advance. We're planning well into the next generation to ensure that we pass on an energy system that's strong, reliable and clean to that next generation—

The Speaker (Hon. Steve Peters): Thank you. Final supplementary?

Mrs. Christine Elliott: The case heard by the Ontario Energy Board just weeks ago wasn't just about hydro receiving the \$53-million tax. Consumers Council of Canada warned again that "Ontario will likely impose similar levies on customers of the province's two biggest gas utilities, raising an additional \$100 million or more in total."

Natural gas companies and consumers are worried enough about the new hidden taxes that they took part in the OEB hearings, where the Attorney General fought for the power to keep collecting the taxes.

Now the McGuinty Liberals are backtracking once again. Is it because of the efforts of the PC caucus or because Premier McGuinty broke the law to collect these hidden taxes?

Hon. Brad Duguid: As I predicted, I guess for the sixth time, the answer is no, we're not doing that.

But what I will say is this: We will not do what they did. We will not disinvest from the energy system. We will continue to invest in our energy infrastructure. We're not going to leave the next generation in the lurch like you left our generation.

After their years in office, they had the use of coal going up 27%, polluting our air, impacting the health of ourselves and our kids. By 2014, we'll be one of the first jurisdictions in the world—indeed, something that all Ontarians will take some pride in—to be completely out of coal.

We will continue to invest in building a strong system of energy. We'll continue to ensure that Ontario families have a power system that they can count on. That stands in stark contrast to what they did seven years ago, and it still stands in stark contrast to where they want to go in the years ahead.

We're going to stand by Ontario families to ensure they have—

The Speaker (Hon. Steve Peters): Thank you. New question.

HYDRO RATES

Ms. Andrea Horwath: My question is to the Acting Premier. Yesterday, in response to questions about donations to the Ontario Liberal Party, CEOs of public utilities said that they gave because that is how they got access to this government. Does the minister think that families paying sky-high electricity rates want to see their money spent on political fundraisers?

Hon. Dwight Duncan: The leader of the third party failed to disclose yesterday in her questioning in this House that she in fact had accepted contributions from fully regulated energy companies. The leader of the third party accepted a \$1,000 contribution to her leadership campaign.

Matheson to help her arrange meetings and make phone calls. The member for Toronto–Danforth failed to inform Ontarians that he was a registered lobbyist with Greenpeace and the Ontario Nurses' Association. In fact, federal filings show that the member for Toronto–Danforth continued to be a lobbyist for nearly two months after he was elected an MPP.

There are always challenges in providing openness and accountability. No government has done more for openness and accountability than the McGuinty government. No government has done more to ensure taxpayers that they get good value for their money in all of the decisions we—

Interjections.

The Speaker (Hon. Steve Peters): Stop the clock.

Final supplementary.

Ms. Andrea Horwath: No government has done more to ensure that public money goes into the pockets of their friends. That's what's happening in Ontario these days. Public money that's meant for hospitals, that's meant for universities, that's meant for colleges, that's meant for public utilities is being diverted to consultants, to lobbyists and to Liberal Party coffers, all with the McGuinty government's approval. This is what's happening in this province, and it's simply wrong.

Why should Ontario families believe that this government will make life more affordable, will make hydro rates more affordable, when it only seems to be concerned with rewarding their friends, insiders and their own Liberal, partisan war chest?

Hon. Dwight Duncan: The leader of the third party lost all of her credibility after a line of questions yesterday and when we revealed the fact that what she was accusing this party of they've been doing for many years, in fact.

We have moved on a number of fronts—

Interjection.

The Speaker (Hon. Steve Peters): Member from Hamilton East, please come to order.

Interjection.

The Speaker (Hon. Steve Peters): And Trinity–Spadina.

Please continue.

Hon. Dwight Duncan: We have taken a number of steps to improve accountability, most recently the legislation that my colleague the Minister of Health introduced. Our hope is that the third party will support that legislation.

I would just remind you and the House that according to Charles Caleb Colton, "No sinners are so intolerant as those that have just turned saints." They've got a track record, and we'll continue to expose it for what it is: fallacy and phoniness all around.

TAXATION

Mr. John Yakabuski: My question is for the Minister of Energy. Yesterday, following question period, the Minister of Energy was asked by media about the special

purposes charge, also known as your hidden tax on hydro and natural gas. He told the media, "We will not be applying those fees to the gas industry," and no longer applying those to the electricity industry.

Are the hidden taxes on hydro and natural gas gone for good, or only for this, the election year?

Hon. Brad Duguid: For the seventh time, no, we're not raising any fees when it comes to our efforts to continue to invest in conservation. But that doesn't mean that we're going to take their advice and not continue to work hard on conservation with Ontarians. We have a lot of work to do with Ontarians when it comes to working very hard to ensure that we're conserving as much as we possibly can in this province. We're going to continue with that work and we're going to continue to ensure that Ontario is a global example when it comes to conservation.

We've saved over 1,700 megawatts of power. That's billions of dollars when it comes to what we would have had to build in terms of plants. It's very significant, and that saves, ultimately, ratepayers' dollars in the long run.

We're doing energy and we're doing it smart. We're going to continue to invest in conservation, unlike that party, who totally opposes conservation—

The Speaker (Hon. Steve Peters): Thank you. Supplementary.

Mr. John Yakabuski: If the Minister of Energy wants Ontario families to take what he said about these hidden taxes seriously, he would scrap schedule D of the Green Energy Act, the part of the act that gives you this special secret taxing authority. You have yet to introduce legislation that would accomplish that, and you've backtracked so often you can't even keep your own current policy straight.

When can Ontario families and industry expect legislation that will repeal this section of the Green Energy Act that gives you those secret taxing powers?

Hon. Brad Duguid: We know that the party opposite opposes the Green Energy Act and the 50,000 jobs that come with it. We know that because they stand in this place and oppose those investments day in and day out, while their members join us in cutting the ribbons when those jobs across this province are being announced.

Will the member opposite join me in Sarnia–Lambton, where 800 jobs have been created? Will he go eyeball to eyeball with me and those 800 families that are getting work out of this Green Energy Act, and tell them that he and his—

Interjection.

The Speaker (Hon. Steve Peters): To the member from Renfrew, you just asked—

Mr. John Yakabuski: But he challenged the member.

The Speaker (Hon. Steve Peters): You're challenging the Speaker. The member knows the rules. If he's not satisfied with an answer that he receives from a minister, he can call for a late show.

Minister?

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Hon. Brad Duguid: That's okay, Mr. Speaker. I'm taller on skates, I say to the member opposite.

Will the member go to Kingsville with me and meet those families in Kingsville, where they're getting 300 jobs, and tell those families that he and his leader oppose their jobs? Will the member go up to Timmins-James Bay, where 800 jobs are being created in the north? Will he join me in the north and tell those northerners that their—

The Speaker (Hon. Steve Peters): Thank you. New question?

INSURANCE RATES

Mr. Peter Kormos: To the Deputy Premier: Every time Ontarians open another bill they get the shock of their lives. On Monday it's the hydro bill, and then on Tuesday it's the insurance bill. At a time when hard-pressed Ontarians can barely keep their heads above water, why won't this government listen to the insurance brokers, to the consumers' groups and to anti-poverty groups and ban the use of credit scores in the home insurance industry?

Hon. Dwight Duncan: We have in fact banned the use of it in those areas over which we have complete jurisdiction, most recently in auto insurance. We recognize the challenges associated with tied selling and have taken steps to correct that.

We will continue to work with the industry and stakeholders, as we did in the most recent process, to bring forward a balanced set of reforms that will ensure Ontarians have good protection; that we don't protect those who abuse the system; and finally, ensure that rates grow at a very modest rate over time.

The Speaker (Hon. Steve Peters): Supplementary?

Mr. Peter Kormos: Ontarians are hurting, and the last thing they need is to open their bills and find insurance premiums that jumped 50% or even 100% just because they were a little late on a credit card payment. The province has banned the use of credit scores on auto insurance and I just can't understand, if it isn't valid for auto insurance, why the government insists that it's valid when it comes to home insurance.

Other provinces have already moved on this. There's a solid front of brokers and consumers' groups demanding the end to this profoundly unfair practice. Will this government ban the use of credit scores in determining home insurance premiums or, once again, is it going to cave in to powerful insurance lobbies and abandon Ontario homeowners?

Hon. Dwight Duncan: Again, the member's question draws into consideration the integrity of the NDP position on this. He suggested that insurance rates have gone up 50%; nothing could be further from the truth. Since 2003, they've gone up 5%. That's not according to me, that's according to the regulator, and that's over seven years.

It's passing fancy to see the member opposite, who wants to put insurance brokers out of business because he supports public auto insurance—it is passing fancy to see him doing that.

I say to the brokers from across Ontario, we'll work with you and with your industry to ensure that our insurance products are comprehensive, they're good products, the price increases are modest and they serve all Ontarians well, including the industry itself.

PATIENT SAFETY

Ms. Helena Jaczek: My question is for the Minister of Health and Long-Term Care. The first week of November is marked by the Canadian Patient Safety Institute as Canadian Patient Safety Week. Since 2005, this has become a national annual campaign as part of the institute's mandate to build and advance a safer health system for Canadians. I have heard that implementing electronic medical records is one of the ways that we can make our health care system safer for patients, so I would ask the Minister of Health: Are we making progress on this front, and how will electronic medical records help patient safety?

Hon. Deborah Matthews: Thank you to the remarkable member from Oak Ridges-Markham for this question. The member opposite is absolutely right: Implementing electronic medical records helps us make Ontario's health system safer.

Earlier this morning I stopped by Taddle Creek Family Health Team, just down the street, to announce that we have achieved a significant milestone when it comes to electronic medical records. More than five million Ontarians now have their care managed electronically. That's an increase of more than 80% in just one year.

There is no doubt that building an electronic health system does improve patient safety. One way patient safety is enhanced is that e-records can help doctors prevent medication errors when writing and renewing prescriptions. Another way is that doctors have access to the entire patient history and can prompt tests when—

The Speaker (Hon. Steve Peters): Thank you. Supplementary?

Ms. Helena Jaczek: I'm pleased to hear of the progress we're making on e-records, and I understand that these records will help make the patient experience safer.

Minister, there are many aspects to patient safety. It is my understanding that your ministry is compiling information on outbreaks in hospitals that also put too many people at risk. Just a few years ago, there were outbreaks of *Clostridium difficile*, or *C. difficile*, in hospitals across Ontario. In fact, my father was made very ill with this infection. There were even tragic deaths as a result of this outbreak.

I know that *C. diff* rates are one of the areas that we now report on. Can the minister please tell this House what is being done to promote patient safety in our hospitals, especially related to issues like *C. diff* rates?

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

AND IN THE MATTER OF a motion by the Consumers Council of Canada and
Aubrey LeBlanc in relation to section 26.1 of the *Ontario Energy Board Act, 1998* and
Ontario Regulation 66/10.

	THE ONTARIO ENERGY BOARD
	MOTION RECORD OF THE INTERVENOR, THE ATTORNEY GENERAL OF ONTARIO
	MINISTRY OF THE ATTORNEY GENERAL Constitutional Law Branch 720 Bay Street, 4th Floor Toronto, Ontario M7A 2S9 Fax: 416-326-4015 Robert E. Charney – LSUC #23652S Tel: 416-326-4452 robert.charney@ontario.ca Arif Virani – LSUC #44463H Tel: 416-326-0131 arif.virani@ontario.ca Robert Donato – LSUC #44544F Tel: 416-326-4473 robert.donato@ontario.ca Counsel for the Intervenor, The Attorney General of Ontario