



ONTARIO ENERGY BOARD

FILE NO.: EB-2012-0047

VOLUME: 3

DATE: February 21, 2013

BEFORE: Paula Conboy Presiding Member
Cathy Spoel Member
Emad Elsayed Member

THE ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF an application under section 74 of the Act by Horizon Utilities Corporation for a licence amendment;

AND IN THE MATTER OF a motion by Horizon Utilities Corporation;

AND IN THE MATTER OF a motion by Hydro One Networks Inc.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Thursday, February 21st, 2013,
commencing at 9:00 a.m.

VOLUME 3

BEFORE:

PAULA CONBOY Presiding Member

CATHY SPOEL Member

EMAD ELSAYED Member

A P P E A R A N C E S

RICHARD LANNI MAUREEN HELT	Board Counsel
JUDITH FERNANDEZ	Board Staff
DENNIS O'LEARY	Horizon Utilities Corporation
MICHAEL ENGELBERG JIM MALENFANT	Hydro One Networks Inc.
SCOTT STOLL	Brant County Power, Essex Powerlines, EnWin Utilities Ltd.
ROBERT MALCOLMSON	Multi-Area Developments
RICHARD STEPHENSON	Power Workers' Union (PWU)
JAY SHEPHERD	School Energy Coalition (SEC)

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

<u>Description</u>	<u>Page No.</u>
--- On commencing at 9:00 a.m.	1
Preliminary Matters	1
Closing Argument by Mr. O'Leary	12
Closing Argument by Mr. Shepherd	42
Closing Argument by Mr. Stoll	51
--- Recess taken at 10:36 a.m.	61
--- On resuming at 10:52 a.m.	61
Preliminary Matters	61
Closing Argument by Mr. Engelberg	63
Closing Argument by Mr. Stephenson	90
Closing Argument by Mr. Malcolmson	97
Closing Argument by Mr. Lanni	102
Reply Argument by Mr. O'Leary	110
--- Whereupon the hearing concluded at 12:30 p.m.	121

E X H I B I T S

<u>Description</u>	<u>Page No.</u>
EXHIBIT NO. K3.1: SUMMARY OF SUBMISSIONS IN-CHIEF OF HORIZON UTILITIES CORPORATION.	2
EXHIBIT NO. K3.2: HORIZON UTILITIES CORPORATION BRIEF OF LAW AND AUTHORITIES, ORAL ARGUMENT FEBRUARY 21, 2013.	2
EXHIBIT NO. K3.3: SCHEDULE D OF THE RURAL HAMILTON LAND USE DESIGNATION.	3
EXHIBIT NO. K3.4: DOCUMENT FROM HAMILTON URBAN OFFICIAL PLAN ENTITLED "MODIFICATION 49".	4
EXHIBIT NO. K3.5: HYDRO ONE NETWORKS' DISTRIBUTION CUSTOMERS' CONDITIONS OF SERVICE EXCERPT.	90

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

Description

Page No.

NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING

1 Thursday, February 21, 2013

2 --- On commencing at 9:00 a.m.

3 MS. CONBOY: Thank you very much. Please be seated
4 everyone.

5 Good morning. We are sitting today to hear final
6 argument in Board No. EB-2012-0047, and I think we will get
7 right into it. I know that we have a few filings here. Do
8 you want to deal with them right away, and then we will see
9 if there are any other preliminary matters?

10 **PRELIMINARY MATTERS:**

11 MR. O'LEARY: Good morning, Madam Chair, Panel. The
12 two filings that Horizon Utilities has include our -- well,
13 our brief of law and authorities, and we've also, as I over
14 the last several days have spent many hours putting
15 together my oral argument, realized there is absolutely no
16 way I will get to everything in 45 minutes without talking
17 like an auctioneer.

18 So we have actually prepared a summary of our
19 submissions in writing, as well, and hopefully that will be
20 of assistance to you, because I just don't think I will be
21 able to hit on every point. As the applicant, there is a
22 lot of material, and so we did go the extra distance and
23 provide some written submissions, as well.

24 MS. CONBOY: Okay. Thank you very much, Mr. O'Leary.

25 MR. O'LEARY: Then the only other filing we have,
26 Madam Chair, is actually we took it upon ourselves to
27 respond to the question from Ms. Spoel at the end of the
28 day last time when she asked the Hydro One panel if they

1 would go back and look at the rural official plan of
2 Hamilton, schedule D, which is rural land use designations.

3 MS. CONBOY: Yes.

4 MR. O'LEARY: This is the one dated January 2012. We
5 have actually prepared copies of that document, and the
6 panel -- I wasn't sure whether everyone thought the panel
7 had responded to the question. Looking at the transcripts,
8 it appears that they didn't.

9 And it is fairly self-evident from this document what
10 the lands, south and east, are zoned as, agricultural, with
11 the exception of the little area at Elfrida, which is
12 actually zoned rural settlement. That is the built-up area
13 that we talked about.

14 MS. CONBOY: Thank you.

15 MR. O'LEARY: So perhaps we can mark this as an
16 exhibit, since it was referred to during the proceeding.

17 MS. CONBOY: Okay. So we've got three, here, exhibits
18 to be marked.

19 MR. LANNI: So we will mark as K3.1 summary of
20 submissions in-chief of Horizon Utilities Corporation.

21 **EXHIBIT NO. K3.1: SUMMARY OF SUBMISSIONS IN-CHIEF OF**
22 **HORIZON UTILITIES CORPORATION.**

23 MS. CONBOY: Thank you.

24 MR. LANNI: Exhibit K3.2, Horizon Utilities
25 Corporation brief of law and authorities, oral argument
26 February 21, 2013.

27 **EXHIBIT NO. K3.2: HORIZON UTILITIES CORPORATION BRIEF**
28 **OF LAW AND AUTHORITIES, ORAL ARGUMENT FEBRUARY 21,**

1 **2013.**

2 MR. LANNI: And Exhibit K3.3 will be the map filed,
3 which is part of the Hamilton urban official plan, schedule
4 D.

5 **EXHIBIT NO. K3.3: SCHEDULE D OF THE RURAL HAMILTON**
6 **LAND USE DESIGNATION.**

7 MS. CONBOY: We have two of the three that have just
8 been mentioned.

9 MS. SPOEL: Mr. Lanni, I think it is the Hamilton
10 rural official plan, is it not?

11 MR. LANNI: Schedule D of the rural Hamilton land use
12 designation. Thank you.

13 MS. CONBOY: And you brought copies of that you, Mr.
14 O'Leary?

15 MR. O'LEARY: I brought five of everything. There are
16 additional copies of both the brief of authorities and the
17 summary of submissions and the maps here for any party, as
18 well.

19 MS. CONBOY: Thank you, Mr. O'Leary. Now, if you've
20 got your summary of your submissions, are you telling me
21 that -- I've got you down here for 45 minutes. Does that
22 mean you will be less than 45 or you will take your 45?

23 MR. O'LEARY: Given the opportunity, I would have been
24 at least two hours, but there are key points that we need
25 to get to, so I will need the full 45 minutes.

26 MS. CONBOY: Well, I will remind everybody that we do
27 have -- we've got a couple of minutes to play with, but
28 Ms. Spoel does have a hearing this afternoon. I know that

1 there are other people in this room that will be in that
2 hearing, as well. So we are going to have to really stick
3 to our time.

4 Are there any other preliminary matters?

5 MR. ENGELBERG: Yes, Madam Chair. On behalf of Hydro
6 One, Hydro One expected that it would be answering Ms.
7 Spoel's question this morning. So what I have just
8 obtained and brought with me is a document also from the
9 Hamilton urban official plan entitled "Modification 49",
10 dated the same day as the item that has just been marked.

11 MS. CONBOY: Thank you. Okay.

12 [Mr. Engelberg passes out the document]

13 MS. CONBOY: Thank you. Mr. Lanni, we could mark
14 that.

15 MR. LANNI: K3.4 will be entitled "Modification 49.

16 **EXHIBIT NO. K3.4: DOCUMENT FROM HAMILTON URBAN**
17 **OFFICIAL PLAN ENTITLED "MODIFICATION 49".**

18 MR. ENGELBERG: If I could bring to the Board's
19 attention how that answers the question and the reason for
20 which it is being filed, the striped area, diagonally
21 striped area at the right-hand side, is the area about
22 which the question was being asked.

23 The rectangular area that fits in the inside of the L-
24 shape that is marked as a rectangle is the area covered by
25 the service area amendment application.

26 And as you can see from the legend, what the stripes
27 mean is that it's policy area B, which is future urban
28 growth node.

1 MS. CONBOY: Thank you.

2 MR. O'LEARY: Madam Chair, if I may, immediately below
3 what my friend just referenced, it indicates: Special
4 policy area B is still under appeal, multiple parties.

5 So it appears that there is litigation, and the
6 question I have is that my friend's position has been
7 throughout that there is growth that's taking place in this
8 area. Is there any reason why this document was not
9 referred to in their evidence in-chief, and us, Horizon,
10 given an opportunity, then, to test it and to actually get
11 a coloured map and perhaps determine what special policy
12 area B means?

13 It could mean something that's completely irrelevant
14 from the perspective of this proceeding, and yet it's being
15 presented as if there is something happening in that area.

16 MS. CONBOY: Well, I think to be fair, Mr. O'Leary, I
17 understand Hydro One is saying that this map, they didn't
18 rely on it obviously in the proceeding, but it came to --
19 they brought it forward only in response to Ms. Spoel's
20 question.

21 MR. ENGELBERG: That's correct, Madam Chair.

22 To be clear, Hydro One never relied in its position on
23 present growth in the particular area covered there.

24 The reason Hydro One is filing this is because it was
25 Hydro One's understanding, from the evidence of the
26 applicant, that one of the witnesses had said that this was
27 greenbelt area that could not be developed, because
28 greenbelt area has a very high degree of protection.

1 And all that Hydro One wants to show, in response to
2 Ms. Spoel's question, is that the land is not greenbelt
3 area. Hydro One's case does not hang on whether there is
4 going to be development within the next couple of years in
5 that particular area, and this simply answers the question
6 as to what the status of the land is at the present time
7 and that it could be developable in the future.

8 MS. CONBOY: Thank you very much.

9 MR. SHEPHERD: Madam Chair, sorry.

10 MS. CONBOY: Mr. Shepherd, yes.

11 MR. SHEPHERD: I am very concerned about this, because
12 it actually is a little bit central to my argument, and I
13 don't see how the Board can make any conclusion on this map
14 unless you know what special policy B means. And my
15 concern is that if the Board reaches any conclusions on
16 this, it will be on incomplete evidence.

17 So either -- it seems to me either Mr. Engelberg files
18 the full story and we can test it, or he has to withdraw
19 this.

20 MS. CONBOY: One moment, please.

21 [Board Panel confers]

22 MS. CONBOY: Thank you. Following on on what I had
23 said a little bit earlier, K3.3 was produced today in
24 response to a question that Ms. Spoel put the last time we
25 got together.

26 We've got Horizon has -- and her question, I believe,
27 was about confirming whether it was agricultural land.

28 Horizon has provided us with the map that Ms. Spoel

1 was referring to; it is in the public domain.

2 Hydro One is now coming forward and say -- is saying,
3 in response to Ms. Spoel's question and the submission of
4 the map that Ms. Spoel was referring to, take into account
5 this part is under appeal.

6 We recognize -- it too is on the public record. We
7 recognize that it has not been through the proper
8 evidentiary phases that we go through in terms of the
9 interrogatories.

10 I am not sure what conclusions we can draw from this,
11 with these maps coming in at this point in time. And we
12 will just have to deal with it in our decision, in terms of
13 weight.

14 So it is here just to respond to Ms. Spoel's question.
15 We haven't had an opportunity, any of us, to discuss it and
16 question it. So we will give it that appropriate weight
17 when we get to -- when we get to our decision.

18 MR. ENGELBERG: Madam Chair, one more item in response
19 to a submission made by my friend a few minutes ago.

20 He mentioned that he had about two hours of argument,
21 and that to keep it within 45 minutes he will do so orally,
22 but would like to file the full extent of the submissions.

23 I have no objection to that, but I assumed that the
24 Board would be very rigid with its restriction to the times
25 allotted originally.

26 So Hydro One had approximately one-and-a-half hours'
27 worth of submissions. I cut it four times to get it down
28 to 45 minutes. I will stay within the 45 minutes, but then

1 I, too, would like permission to file in writing -- it
2 won't be today because I didn't even bring the full
3 document with me, assuming that I wouldn't be able to file
4 it, but I would be able to like to file the full document,
5 just as Mr. O'Leary will be filing his full document.

6 MR. O'LEARY: Well, Madam Chair, in fact, what my
7 friend is asking for is surreply. He is looking for an
8 opportunity not only to hear my argument, but take it home
9 with him, think about it, and craft up a further response,
10 which is procedurally unheard of, frankly.

11 And it is quite common in every proceeding that a
12 party, if they are so inclined, even in oral submissions,
13 bring forward some written submissions to assist the panel,
14 the trier of fact or the administrative board as to their
15 job, which is to ultimately rule on the matter. It is
16 quite common that in an oral submission you would accompany
17 it with some written submissions, as well.

18 To then say that gives you a right to go back and take
19 it home and over the weekend work on it and come back with
20 a surreply would be prejudicial.

21 MS. CONBOY: Mr. O'Leary, you were the one that asked
22 me, you were the one that asked this Panel to come forward
23 today, sit today, and hear oral argument.

24 And we were given these times.

25 MR. O'LEARY: Yes, and I --

26 MS. CONBOY: And you arrived today and said: Please
27 make an exception because I am going to be two hours and
28 I've only got 45 minutes, so I can provide my submissions

1 in writing and I have them here.

2 Mr. Engelberg also said: Okay, we are agreeing to
3 coming forward today and provide oral argument. Said he
4 had about two hours, an hour and a half, and put it down to
5 45 minutes. And now that he realizes that you have also
6 brought in written submissions, is saying: Afford me the
7 same opportunity.

8 I think that is fair.

9 MR. O'LEARY: Well, Madam Chair --

10 MS. CONBOY: And I understand what you're saying about
11 that there is no right of reply, but I will tell you, at
12 the rate that we're going, you will probably get your right
13 of reply tomorrow, because I am not sure how we're going to
14 get through everything today.

15 So if you will just bear with me for a minute.

16 Is anybody else feeling the same way, Mr. Shepherd and
17 Mr. Stoll, Mr. Stephenson, Mr. Malcolmson? Are we all
18 feeling that we have given our allotted times, but you
19 need, you want to supplement it with written comments?

20 MR. SHEPHERD: I was relying on Mr. O'Leary to do the
21 reply. And if he's not able to do the reply because Mr.
22 Engelberg has a further opportunity, then that prejudices
23 me too.

24 MR. ENGELBERG: Madam Chair, just to be clear, to
25 address Mr. O'Leary's concerns, I am not asking for an
26 opportunity to reply.

27 I have the full document on my computer at work. It's
28 got tracked changes with the stuff that was cut. I am not

1 asking for the weekend to rethink about what he had and
2 submit a reply to that. I've got the document at work. I
3 can get it into the Board by, you know, two hours after we
4 finish here.

5 MS. CONBOY: One moment, please.

6 [Board Panel confer]

7 MS. CONBOY: The written submissions that you are
8 proposing to file a couple of hours after we dismiss today,
9 Mr. Engelberg, you will be covering all of them in your
10 oral argument to some degree or another?

11 MR. ENGELBERG: Yes, and we'll probably --

12 MS. CONBOY: In other words, we're going be able to
13 tell if you are actually bringing something up in your
14 written argument that you haven't brought up orally today?

15 MR. ENGELBERG: Absolutely.

16 MS. CONBOY: Okay. We will give you till the end of
17 the day to file, but the end of the day, you know, 4:30,
18 end of day.

19 Mr. O'Leary, does that cause you --

20 MR. O'LEARY: I'm fine with that.

21 MS. CONBOY: -- any further concern?

22 MR. O'LEARY: That appears fair.

23 MS. CONBOY: Okay. Mr. Stephenson, you are holding
24 your head in your hands, are you? Everything okay?

25 MR. STEPHENSON: I am just despairing. I would just
26 like to get going. I appreciate your efforts.

27 MS. CONBOY: Okay. Thank you.

28 So let's get started.

1 MR. O'LEARY: Madam Chair, there is just one other
2 matter.

3 My friend has filed some transcript corrections, and
4 we are agreeable to all but one. And that relates to -- it
5 is a question of the -- at page 40, line 5, the transcript
6 indicated that the witness, the Hydro One witness indicated
7 that the cost to purchase a transformer for the high school
8 would be \$50,000, and they wish to replace that with
9 "\$15,000." And certainly I heard "\$50,000," and I am
10 advised that it is -- it is not possible to obtain a
11 transformer which would supply the load required by the
12 school for even twice that price. And so we have some
13 difficulty with that.

14 Indeed, if you look at the costing that Horizon
15 Utilities has included, they've got \$41,181.

16 MS. CONBOY: Right. Are you referring -- are you
17 making a correct correction to what somebody said? Or are
18 you disputing that you agree with what they said?

19 MR. O'LEARY: We're disputing the correction that
20 Hydro One is proposing. They're saying the \$50,000
21 evidence as to the cost to obtain a transformer that the
22 school would have to purchase should be "\$15,000," and
23 we're saying, I'm saying, that that can't be done. Indeed,
24 when, in their evidence, they indicated that Horizon
25 Utilities' numbers were closer to theirs, our number is
26 \$41,000 for the material, which is the transformer.

27 Now they're saying 15. It is just not credible.

28 MR. SHEPHERD: Madam Chair, I was in the room at the

1 time, and I heard "\$50,000." And "\$50,000" is exactly what
2 they said in their IR response to SEC 10.

3 MS. CONBOY: Thank you.

4 We will have a look at that correction, Mr. O'Leary,
5 and deal with that, if we need to.

6 MR. ENGELBERG: Madam Chair, just to be clear -- and
7 this may get us to where we all want to go -- my
8 understanding is that it is \$50,000 inclusive of
9 installation, but 15,000 for the transformer.

10 MS. CONBOY: Thank you.

11 Well, I still see you are disagreeing with it, and you
12 can certainly bring that up, Mr. O'Leary.

13 So we are at 25 after now, and your submissions then
14 will bring us to 10 after.

15 **CLOSING ARGUMENT BY MR. O'LEARY:**

16 MR. O'LEARY: Thank you, Madam Chair, and thank you
17 for hearing us out on this important matter. I say it is
18 an important matter because, to my knowledge, this is the
19 first oral hearing that has considered in some detail the
20 criteria set out in the combined proceeding, which was
21 held, almost to the day, nine years ago.

22 Your decision will either reinforce the criteria set
23 out in the combined proceeding, or you will allow Hydro One
24 to undertake a collateral attack on the important rules and
25 policies set out in the combined proceeding.

26 This is an important proceeding because of that. It
27 will undoubtedly be used across the province in future
28 proceedings, and that is why we see that there are other

1 intervenors involved in this proceeding. It is not just
2 limited to Horizon and Hydro One.

3 But in effect, it is our submission that Hydro One is
4 asking you to effectively throw out the window the
5 principles of economic efficiency and cost-effectiveness.

6 If Hydro One's position in this matter is sustained
7 and it its refusal to disclose appropriate costs, and
8 undertake a fair comparison between the two utilities'
9 costs to connect, to provide the fully loaded costs of all
10 of the costs to connect, Hydro One will be incented in
11 future to cloak its future projects in terms of
12 enhancement, and thereby believe that it can avoid having
13 to undergo any scrutiny or disclosure in respect to the
14 costs of those projects, even though clearly they are
15 needed, as has been proven in this case, to supply power to
16 the customers along Rymal Road, which are parts I through V
17 of this application.

18 They're saying none of those costs should be counted,
19 and they don't appear in any of their offers to connect and
20 they don't appear in their responses to the
21 interrogatories.

22 If Hydro One's position in this proceeding is
23 sustained, developers everywhere will look to it to exclude
24 expansion costs in their offers to connect, as has happened
25 in this case.

26 Multi-Area has been asked to contribute absolutely
27 nothing to the costs to connect to phase 7, part I.

28 That, we submit, would set a precedent which is

1 contrary to the Distribution System Code and contrary to
2 the principles that you are obligated to apply in respect
3 of your consideration of the rules and the Ontario Energy
4 Board Act, which is the protection of the interests of
5 consumers.

6 A developer, if required by an economic evaluation,
7 which includes appropriate expansion costs, should be
8 contributing to those costs, not the ratepayers of the
9 utility that provide service.

10 Another attack on the Distribution System Code is the
11 use of the "lie along" submission that my friend has made,
12 in that they have effectively said through their witnesses
13 that any building, regardless of the size, regardless of
14 the load, if they have a line along the street, they can
15 consider it a lie along and, therefore, they do not need to
16 undertake an economic evaluation.

17 We submit that is contrary to the Distribution System
18 Code, as well. And it is all done with the clear and
19 obvious intent of opposing the service area amendment
20 application.

21 The only way that Hydro One believes it can be
22 successful, because it can't win on the facts, is by
23 distorting the rules, and that's what they've done in this
24 case, practically at every turn.

25 If Hydro One's position is sustained, then the
26 fundamental principle of cost causality will also be
27 sacrificed, in that the developer will not have been asked
28 for a contribution to the actual cost to supply the load to

1 the new development, the one for which they will make a
2 profit.

3 Am I exaggerating or overpainting the picture here?
4 Our submission is no. This is an important matter, and
5 that is why you see many of the parties here and the level
6 of the parties that have attended to follow these
7 proceedings.

8 Now, historically -- and I won't take you to the brief
9 of authorities, but it is there. I have included in our
10 brief of authorities, K3.2, all of the earlier service area
11 amendment proceedings. And there is the first one for the
12 entire property. Multi-Area requested the entire property,
13 and by "entire property", I mean the full Trinity Church to
14 Swayze Road property.

15 It was turned down for the reasons stated in that
16 decision, but the developer did seek Horizon to serve that
17 area and Hydro One, according to that decision, did not
18 oppose it.

19 There were then eight applications which were
20 subsequently brought, six of which were consented to by
21 Hydro One, two of which were -- they did not oppose, but,
22 at the end of the day, we see all of the development that
23 has occurred throughout the project that has occurred at
24 both ends, both the commercial development at the east end
25 and the residential development and the institutional
26 development at the west end. They consented to it.

27 The witnesses admitted they knew that there could be
28 up to 3,200 homes and schools and commercial properties

1 here as customers. They knew that the development would be
2 done over time in different phases. They knew, and
3 admitted, that they could not provide service and that the
4 better utility provide service, the more efficient utility
5 provide service was Horizon.

6 That they cannot dispute, and they didn't try, because
7 it is in the decisions of the Board, but historically knew
8 that, and it is relevant. My friend may suggest it is not
9 relevant. We submit it is, because it's natural that the
10 utility, Horizon Utilities, that's going to provide power
11 to these residences would build out its system consistent
12 with what it anticipates the future growth of this area
13 will be.

14 And, indeed, one of the large maps - you may recall
15 there was the double map that I brought that shows the
16 detailed infrastructure that Horizon has put into place -
17 it shows clearly that they have built out along these roads
18 in the expectation that there will be a connection down the
19 road to the next development phase.

20 Indeed, some of the streets are currently stopped,
21 because construction has stopped, but there's expectation
22 that the street will continue. What Hydro One is proposing
23 is that that would be dead-headed there, and then they come
24 in from the back door and supply the load to the areas that
25 are subsequently going to be developed.

26 They're asking you to forget about the past because it
27 is irrelevant, because they want to serve the area. But
28 the test is the combined proceeding. And I'm going to use

1 the criteria set out in the combined proceeding as
2 basically my map or plan to follow the majority of the
3 argument.

4 If I could ask you to turn to tab 4(b), that is a copy
5 of the combined proceeding. At page 84 -- sorry, paragraph
6 84, and this is under the heading 2.3, "Economic Efficiency
7 and Maintenance of a Financially-Viable Industry".

8 The reason why that heading was used is because the
9 Board looked to the objectives in the Ontario Energy Board
10 Act which requires it to promote economic efficiency. Let
11 me stop there. And since then, it has been added to the
12 objectives, cost-effectiveness. Now you've got to look at
13 both.

14 So our submission is that not only is economic
15 efficiency an important objective back then; it has been
16 added to. The government has said you have to also look at
17 cost at cost-effectiveness, as well. So it is mandated
18 even to a greater extent today than it was in 2004.

19 But if you could turn to paragraph 84, it sets out
20 what we submit is or are the five important criteria.
21 Reading from paragraph 84:

22 "The promotion of economic efficiency in the
23 distribution sector is one of the Board's guiding
24 objectives in the regulation of the electricity
25 sector. The Board is persuaded that economic
26 efficiency should be a primary principle in
27 assessing the merits of a service area amendment
28 application. Economic efficiency would

1 include..."

2 One:

3 "...ensuring the maintenance or enhancement of
4 economies of contiguity, density and scale in the
5 distribution network..."

6 Two:

7 "...the development of smooth, contiguous, well-
8 defined boundaries between distributors..."

9 Three:

10 "...the lowest incremental cost connection of a
11 specific customer or group of customers..."

12 Four:

13 "...optimization of use of the existing system
14 configuration and..."

15 Five:

16 "...ensuring that the amendment does not result
17 in any unnecessary duplication or investment in
18 distribution lines and other distribution assets
19 and facilities."

20 I am now going to use those five guiding principles to
21 walk you through the evidence. Our submission at the
22 front, so there is just no doubt about it, is that in each
23 of these -- in respect of each of these criteria, the
24 evidence clearly weighs in favour of Horizon Utilities.

25 So let's start with the first, criteria 1, maintenance
26 or enhancement of economies of density, contiguity and
27 scale.

28 We have heard clearly, and the Hydro One witnesses

1 acknowledge, that the neighbouring properties to the west,
2 which are Horizon Utilities, are dense urban. To the north
3 they are, but for the conservation area, and that the scale
4 of the development as it continues eastward throughout the
5 service area amendment lands is dense urban commercial.

6 So clearly that criteria favours Horizon.

7 From the map we saw this morning, the comparison, and
8 from the maps that were produced during the hearing, the
9 lands to the immediate south are either rural or
10 agricultural, which the actual rural land use designations
11 map, K3.3, indicates, and they are similarly rural or
12 agricultural to the east.

13 So what is happening within the urban part of
14 Hamilton, which is the south end, which are these lands is,
15 urban, dense. The scale is the same. It's consistent with
16 what Hamilton has been building out, what Horizon has been
17 building out in these areas, and so it should continue.

18 I should add at this point that from the transcripts
19 -- because I asked Mr. Stevens about whether they had any
20 evidence of growth from the Elfrida. That's the lands to
21 the east of Highway 56. At page 82 of volume 2, I asked
22 whether or not they have any evidence of growth, and the
23 answer was no.

24 So clearly on that criteria, all of the factors weigh
25 in favour of Horizon.

26 Criteria 2, the development of contiguous, well-
27 defined seamless borders. If I could ask you to turn to
28 the very first map which is marked as an exhibit, which is

1 K1.1, this is the one that the Board prepared, which shows
2 the various service area amendments which are part of the
3 -- I might be able to do this without, but if you don't
4 mind me --

5 MS. CONBOY: Well, I think we know it by heart by now.

6 [Laughter]

7 MR. O'LEARY: Well, the southern boundary is the
8 proposed boundary that Horizon suggests. If you grant the
9 five service area amendments, that would exist, that would
10 be the boundary, which we say is natural because of the
11 Hydro One high transmission corridor.

12 So all along, a nice, smooth, well-defined border
13 right over to Swayze Road.

14 By comparison, what Hydro One is asking you to do is
15 to come up with a boundary which would include the school
16 as an embedded area, the homes as embedded areas, and a, if
17 you follow it, a boundary which would go right over to the
18 eastern edge of the built-out area, turn north, then back
19 west, and then north, and then east along until you hit the
20 commercial areas, south, and then along.

21 That is hardly a well-defined and smooth boundary, but
22 that is what Hydro One is proposing.

23 If you look at the Google maps that were produced by
24 both parties - and I invite you to do that - you will see
25 that the development, the smooth line that would run right
26 across the Hydro One corridor actually starts quite a bit
27 west of the service area amendment lands.

28 It is a natural extension. Indeed, the Board said in

1 one of the service area amendment applications earlier that
2 it is a natural extension and a natural continuation of
3 Horizon's service areas.

4 So the second criteria, clearly, has been satisfied.

5 The third criteria is the lowest incremental cost of
6 connection. And I probably don't need to say much on this
7 point, but Hydro One is clearly in need of building a new
8 27.6 circuit along Rymal Road. It said it cannot supply
9 the new customers using the existing 50-year-old, whatever
10 age it is, 8.32, which exists, which doesn't actually even
11 run to Nebo directly.

12 By comparison, Horizon does not need to build a new
13 circuit. It has a fairly new circuit already in existence,
14 along the north side of Rymal Road.

15 So what you are being asked to do is condone
16 installing a second circuit on the same street, even though
17 the evidence in this case - and there's no challenge from
18 Hydro One on this front - even though the evidence in this
19 case supports the finding that Horizon has the capacity and
20 the ability to immediately serve these customers.

21 But let's look at the cost issue. First of all, if I
22 could ask you to turn to paragraph 236 of the combined
23 proceeding, I took the Hydro One panel to this and they
24 agreed that it is important, but it's somewhat noticeable
25 that they haven't produced all of the information.

26 But paragraph 236, under the heading "Economic
27 Efficiency," the Board went back into it to elaborate a
28 little further on the importance of it. But it is

1 indicating and referring to the costs that should be
2 considered for the purposes of evaluating which utility
3 should provide service. The Board states:

4 "In all instances, the costs associated with the
5 connection should be the fully loaded costs,
6 which capture all of the relevant indirect and
7 direct costs reasonably associated with the
8 project at issue, not merely the price of
9 connection quoted to the prospective connection
10 customer."

11 Stop there. That is important, because if Hydro One
12 can, it is going to exclude certain costs, and you produce
13 an offer to connect which doesn't ask the developer to pay
14 anything towards these connection costs. And if that was
15 the test, then you haven't satisfied the criteria and the
16 objectives set out in the act, which is to determine which
17 utility can supply the connection more efficiently in a
18 cost-effective manner.

19 But let's look at the costs. And I took the Hydro One
20 witnesses to their own comparison chart, and it appears --
21 if I could ask you to turn to -- it's the Exhibit K2.1. It
22 is the -- we put together a compendium of all of the
23 connection offers and comparison tables. Sorry, I may have
24 -- sorry, K2.3. It is in the Hydro One compendium that
25 they produced, at tab 9. My apologies.

26 Yes. There was a binder, I believe.

27 MS. CONBOY: Sorry, which tab again?

28 MR. O'LEARY: Tab 9. I have some loose copies if it

1 would be of help.

2 MR. ELSAYED: I have it.

3 MS. SPOEL: I have it.

4 MS. CONBOY: Yes. Go ahead.

5 MR. O'LEARY: Thank you.

6 So this is the comparison table that Hydro One put
7 together. It is not a Horizon document.

8 So you may recall that I took their panel to the
9 various columns that are here. And the question really
10 related to, to put it into context, whether you're using
11 option A or option B.

12 Option A is where the utility builds out the
13 subdivision. It does the civil work, which rarely happens,
14 as we heard in evidence. The reason is that a contractor
15 retained by a developer can usually do it a lot cheaper
16 than a, frankly, unionized utility.

17 But the important thing is I took the panel to this
18 comparison. And let's look at the four columns.

19 The first column I took Mr. Smith to, and he admitted
20 that that column would not and should not be used as a fair
21 comparison. That is transcript 2, page 164 and 170. And
22 the reason is is because it uses the option A, all the
23 civil work costs as estimated by Horizon Utilities.

24 So that one is out. He acknowledged that at those
25 locations in the transcript.

26 The next column to the right, the one headed "January
27 21", Mr. Smith also accepted that this column relates to
28 the option A. You may recall I took him to the

1 interrogatory that was a response to Board Staff, involved
2 the option A costs, and when I took him down to the number
3 of 1-million-57 at the bottom, he acknowledged that,
4 frankly, he -- the way I interpreted it is he misread the
5 interrogatory response, but he ultimately admitted at page
6 170 of the same transcript that that would not be a fair
7 comparison, as well.

8 So those two columns are out.

9 So the option B comparisons are the last two columns,
10 the HUC February 6th one and the Hydro One on the right.

11 And you will see at the bottom, in their own
12 comparison, without any expansion costs, that the Horizon
13 Utilities costs are less. And Horizon Utilities has
14 included - let's go to line 3 - Horizon Utilities has
15 included \$127,000 in upstream expansion costs.

16 No, it is not building any new line or circuits, but
17 there is work being done at Nebo. So it is, through its
18 methodology, collecting something from the developer as a
19 contribution to these required upgrades.

20 To the right of that, we see that Hydro One has
21 included zero. I will come back to the number that should
22 be there in a second.

23 But scrolling down, the number at item 11, contestable
24 costs, you may recall that I asked Mr. Smith questions
25 about that number and compared it to the Hydro One numbers
26 to the right. The intent was to only include the number
27 from Conelco, that we understand is the right number. The
28 right number is 561,971.

1 So you can increase that number to 561,971, and it
2 still means Horizon's costs to connect are less.

3 So we would adjust, because the actual cost to do the
4 civil work - which are the contestable costs - are the
5 same, because that is what the contractor is doing.

6 But the big difference here -- because, you know, at
7 the end of the day, admittedly, the numbers are similar, as
8 stated in this -- but the big difference here, of course,
9 is that Hydro One has not included any expansion costs in
10 this.

11 So, really, what you are being asked to do is to
12 accept on their word that an enhancement project, one to
13 supply a loop-feed - not power to, not a new connection to,
14 but loop-feed - to assist in the reliability for a
15 community seven to 10 kilometres to the south - which
16 they're first going to run north and then east and then
17 south down to the community - that this loop-feed is
18 something you don't look at any of the costs of it
19 whatsoever, even though it must be built. The Rymal line
20 must be built to supply these new customers.

21 Well, let's break it down. What's involved in that?
22 Well, after much pressing, you will recall we finally got
23 an estimate of the costs of the line to Fletcher Road. So
24 we're not talking about the entire line. We're talking
25 about the connection on Glover Road only to Fletcher. This
26 is only to supply phase 7.

27 That is a radial line. It would only supply power one
28 way, so it stops there.

1 What was the estimate? \$400,000. Does that ring a
2 bell? Of course. Mr. Messervey, the supervisor of
3 planning and design, also said it would be \$400,000 just to
4 get the supply to Summit Park. So that is the radial line.

5 We asked for the release documents. The undertaking
6 response, of course Hydro One did not produce any documents
7 which would show that there actually has been approval on
8 this loop feed.

9 But what we do know is Horizon has the loop feed
10 capability today. It can supply any part of the service
11 area amendment lands with the loop feed. Hydro One cannot.

12 So it has to, then, build a new line from the tower
13 line on Highway 56, north -- it's a new circuit -- north,
14 and they admitted they're going to put another set of poles
15 down the other side of Highway 56. You may recall that.
16 We thought they were saving money by putting the circuits
17 on the same pole. No, they admitted there are new poles
18 going down the other side of Highway 56. But that is their
19 service area, God bless them.

20 But the point is the cost to provide the loop feed to
21 phase 7 and the school means they've got to build 5
22 kilometres up Rymal Road, and then west -- sorry, five
23 kilometres up Highway 56, and then west along Rymal Road.
24 And in their evidence, they admitted it was 5-1/4
25 kilometres.

26 We heard a rule-of-thumb estimate of \$200,000 per
27 kilometre. Mr. Messervey used that for his e-mail, where
28 he said it is going to be \$400,000. The Hydro One

1 witnesses said that was a reasonable estimate.

2 If you take 5-1/4 times \$200,000, you've got
3 another million dollars for the line up Rymal Road and
4 Highway 56.

5 I then asked questions about the costs of the Nebo
6 upgrade. We know that their capital contribution from
7 their planning documents, appendix A and B, is about
8 \$7 million.

9 The load for all of the service area amendment lands
10 which remain is about 6 megawatts. If you do the math, six
11 into 64 MVA, which is the upgrades that Hydro One is doing
12 at Nebo, works out to about \$650,000 would be the
13 contribution or the cost to provide the additional load to
14 the service area amendment lands.

15 You add the 400,000 for the radial line, the million
16 dollars to provide the loop feed, and the \$600,000 for
17 Nebo, you've got a total cost of \$2 million, or better.

18 Do you include all of that in the offer to connect?
19 No, but there has to be something there. They're spending
20 the money, and it is all necessary to supply phase 7 and
21 the school, and they have included zero.

22 But at the end of the day, Madam Chair, if you go to
23 the figure again, if you add any amount to the expansion
24 costs line in their comparison chart, all you've done is
25 exaggerated the difference between the two.

26 In other words, you have only made the situation that
27 much more obvious, that much clearer, that Hydro One is
28 more expensive to serve these areas.

1 So our submission on criteria 3 is that clearly it has
2 been demonstrated that Horizon serves phase 7 on a less --
3 lowest cost basis in terms of the connection.

4 In terms of the part II, Fletcher home customers, we
5 asked for, in an interrogatory, the plans and costs that
6 Hydro One has to connect those three homes on Fletcher
7 Road. Didn't receive a response.

8 The evidence of Ms. Lerette was that there are
9 circuits immediately in front of these homes so they can
10 provide immediate power. Hydro One would have to build a
11 line underneath Fletcher Road from the east side to the
12 west side. They haven't given the costs, but exercise
13 common sense. It's going to be more costly to tunnel under
14 the road than it is for Horizon to provide the service.

15 Part III, we asked for the fully loaded costs in
16 respect to provide the service to the new homes on -- not
17 the new homes, the existing homes on Rymal Road.

18 Recall that with the new 27.6 line, each of these
19 homes will have to now be connected to that new line. That
20 is the identical work that would be involved in connecting
21 these homes to the Horizon line which is already there.

22 We asked for the costs. They gave us a number of
23 \$20,000.

24 Ms. Lerette said that work could not be done for
25 \$20,000. I took the Hydro One witnesses to that number and
26 to an interrogatory response where they indicated that it
27 is included in the enhancement costs. Our submission is
28 that if you read the transcripts, it is clear \$20,000 isn't

1 the fully loaded cost to provide power to those customers
2 using the new line. That's only some of it, and they have
3 buried some of it in their enhancement costs, which they
4 refused to disclose.

5 Part IV, and I won't say much here, but I would like
6 to turn you to the cost comparison that relates to the
7 school, and that is in Exhibit K2.1, which is the
8 connection offers, and that's at tab 7.

9 Just to put it in a little context, Hydro One did not
10 do an economic evaluation, so we don't have the details of
11 its costs. If you look at its two connection proposals, it
12 has virtually no costs in it whatsoever.

13 So we're hearing today, on the morning of argument,
14 that \$50,000 is now \$15,000. We don't know, and there is
15 in evidence, of what the actual costs are.

16 They've given in their evidence in-chief some
17 estimates of what they think the school board could buy the
18 transformer at, but we don't know what their costs are.

19 It is all what they think the school board could get
20 it at, because they at least are acknowledging that, using
21 a sub-transmission rate, you are going to have to, as a
22 school board, pay for transformation equipment and its
23 maintenance.

24 But we do know Horizon Utilities' costs, and they're
25 set out in its offer to connect, because it played by the
26 rules. It did an economic evaluation. So we know that its
27 costs are \$63,000.

28 And we don't know what the Hydro One's costs are.

1 What we do know is what the school board has advised,
2 and the school board retained a consultant, an experienced
3 consultant that does this for a living, and it looked at
4 the anticipated load. And in its December 18th letter, the
5 school board attached the consultant's spreadsheet and it
6 determined that comparing the ST rate to the GS rate of
7 Horizon's was about the same.

8 But there were additional costs, which are the
9 \$129,000 that the school board has calculated that they
10 will have to pay to install, own, operate and maintain the
11 transformation equipment and the other specialized
12 equipment that has to exist, because you are looking after
13 the transformer.

14 The point simply being is, if you compare those costs
15 with Horizon's costs, clearly Horizon's costs are the
16 lowest to connect that customer.

17 I should also point out that, once again, there does
18 not appear to be any cost included in Hydro One's numbers
19 for expansion. So, again, they didn't even do the economic
20 evaluation, but it is clear that they have not included any
21 number for the costs to provide the service there.

22 So in the comparison that we used at table 7, we have
23 also excluded the upstream costs from the comparison, but
24 Horizon did use and included about \$115,000 in upstream
25 expansion costs in its offer to connect. Again, it played
26 by the rules, did the economic evaluation, complied with
27 the code, included an amount there, and it has had to
28 remove that number to simply do an apples-to-apples

1 comparison between Hydro One and Horizon, because Hydro One
2 didn't do the economic evaluation.

3 In respect of part V, admittedly there is no economic
4 evaluation which has been undertaken, because we don't know
5 the final details of all of the residences and the
6 institutions that will be built there.

7 So, no, that didn't happen, but it is our respectful
8 submission it is still open to the Board to decide, Let's
9 get this done with. We know Summit Park is being built.
10 We know the customers there. We know that a new secondary
11 redundant circuit down Rymal Road should not occur. We
12 know that Horizon has the capability, the capacity and the
13 assets immediately on the doorsteps of phase -- the next
14 phases, phases 8, 9 and 10, and let's not go through
15 another hearing like this.

16 We can conclude on the evidence here that the lowest
17 incremental cost to serve the balance of Summit Park would
18 be by Horizon.

19 So our respectful submission is that in respect of all
20 five parts, the evidence weighs, from the cost-connection
21 perspective, in favour of Horizon.

22 The fourth criteria, optimization of use of the
23 existing system configuration, nothing could be more
24 obvious, in our respectful submission.

25 Horizon has the lines in the ground. It is there
26 right next door. Hydro One's witnesses admitted that.
27 They confirmed that, yes, they accept that that is the
28 case.

1 So if it is there and you've got the capacity, use it.
2 That's an optimization of the existing assets. You don't
3 build out another line, and in fact, don't use the unused
4 capacity on the existing. There couldn't be anything, I
5 think, more clear than that.

6 And Mr. Burman said, both in his report -- and I don't
7 intend to go into detail, but I certainly encourage you to
8 read it, because it is the most detailed technical response
9 to and use of the combined proceeding criteria that I am
10 aware of that has ever taken place in a service area
11 amendment application. It looks at, factually, what
12 existed and who is in a better place to serve, and
13 concluded that Horizon Utilities meets the criteria.

14 But Mr. Burman also noted in his report, and in his
15 examination, that, in fact, Hydro One's own reliability
16 standards would be improved if it retired the legacy 8.32
17 line along Rymal Road, the one that is currently there that
18 has been serving the legacy houses. If you shorten the
19 existing 8.32 line by the several kilometres, which would
20 then be retired, you're going to improve your CAIDI. And
21 it is going to provide additional upstream capacity to
22 other Hydro One customers.

23 So not only are we saying it is better that Horizon
24 Utilities serve the service areas. As a result of you
25 approving the five amendments here, it will actually
26 improve Hydro One's standards, as well.

27 Criteria five, ensuring the amendment does not result
28 in any unnecessary duplication or investment in

1 distribution lines and other distribution assets, clearly
2 running another circuit down Rymal Road is just contrary to
3 common sense. And that is exactly what Mr. Burman said
4 under cross-examination from Mr. Stephenson; it just
5 doesn't make sense. And that would be a duplication of
6 assets.

7 So looking at the evidence, it is our respectful
8 submission that it is abundantly clear that all five of
9 those important criteria have been satisfied by the
10 applicant.

11 Now, the Board did go on in the combined proceeding
12 and looked at other areas that, if I had the time, I would
13 actually take you to and read, which relate to economic
14 efficiency.

15 At 197, the Board finds that:

16 "Amendments that involve contiguous distribution
17 companies but that are opposed by the incumbent
18 distributor may be in the public interest where
19 the amendment results in the most effective use
20 of existing distribution infrastructure and a
21 lower incremental cost of connection."

22 So that supports this application.

23 Paragraph 200, the Board states:

24 "The Board, for example, discourages the
25 creation..."

26 This is halfway through it:

27 "...the creation of new points of supply to
28 facilitate the distribution of electricity to an

1 existing..."

2 Existing; that is a word that we are dealing with
3 existing customers here.

4 "... or new customers by an incumbent
5 distributor."

6 What they're proposing to do is, in fact, run up
7 through Horizon's service territory. There's no question
8 about this; that diagonal line is all through Horizon's
9 service territory, and then right over to the school is all
10 Horizon's service territory. Then continue along to
11 provide a new point of supply, the new 27.6, to the legacy
12 customers.

13 So the Board is has specifically said they discourage
14 that. They discourage it, and I continue:

15 "...when a bordering and contiguous distributor
16 can provide the same distribution service more
17 efficiently. A service amendment could
18 facilitate the more efficient use of existing
19 infrastructure."

20 Dead on. That is exactly what this case is about.

21 And given the time constraints, I would ask you to
22 also go and refer to paragraphs under the heading 4.3, 234
23 right through to the end of that section, 249.

24 And to try and paraphrase my interpretation of some of
25 the statements by the Board here, it's clear that the Board
26 dismissed many of the Hydro One submissions made during the
27 combined proceeding. And in fact, what they're trying to
28 do in this proceeding by using the cloak of "enhancement,"

1 they are trying to get around the findings against them.

2 Findings like they recognized, the Board, the Panel at
3 that time recognized, that there would be situations where
4 a contiguous amendment would involve the urban distributor
5 and Hydro One, which would be rural, and that this would
6 effectively -- or would likely favour the urban
7 distributor, and Hydro One was concerned about the loss of
8 customers, the loss of revenues.

9 And the Board said: Well, that may be, but it is in
10 the best interests of the province that the efficiency of
11 the system and its expansion on a cost-effective and
12 efficient basis continue, and that that is in the best
13 interest, the public interest, not Hydro One's self-serving
14 interest.

15 But if you read through those sections - and I invite
16 you to do so - you will see that that is the nature of what
17 the Board has said. It has responded specifically to Hydro
18 One's concerns.

19 They have raised many of the same ones here, including
20 the loss of the revenue from the several customers that
21 they first asked us to accept as transfers and then
22 rescinded.

23 The Board was quite clear at -- just to finish up, at
24 paragraph 294:

25 "The Board heard argument to the effect that
26 utilities ought to be compensated for lost
27 opportunities for revenue, where service area
28 amendment results in a connection within their

1 former service area being made by another
2 utility. The Board does not adopt this point of
3 view. Apart from the stranding of assets, the
4 Board will generally not recognize any other type
5 of compensation."

6 You may recall, I was asking the Hydro One witnesses -
7 because they said there weren't any bilateral commercial
8 discussions about the phase 2, Part II customers - and I
9 asked: Well, what would it take? And they wanted
10 something for the loss of revenues, and the customer
11 information system and the management systems.

12 Clearly, the Board has said no in the combined
13 proceeding.

14 The decision also speaks to overlapping service areas
15 and embedded service areas.

16 It said no to both, for reasons that they would create
17 complexity, customer confusion. It would involve the
18 acceptance of unacceptable risks. The language is there at
19 paragraphs 123, 125 and 174, and I invite you to read that.

20 What Hydro One is proposing, of course, is with the
21 school, to have the school completely embedded in Horizon's
22 service territory. And we already know that customer
23 confusion has occurred once. The school thought it was
24 Horizon. They called Horizon, and that is why there is a
25 construction power there.

26 To have two sets of lines running down both sides of
27 the street, crisscrossing each other, you know, if there is
28 an emergency, who do you call? Do both respond? Do we

1 have both Hydro One and Horizon crews out there at the same
2 time? That is not efficient. Or, God forbid, each of them
3 look at the other thinking it is their service territory
4 and nobody shows up in an emergency.

5 These are the kind of risks that shouldn't happen, and
6 that is why the Board said what it did at those paragraphs
7 that I identified.

8 There are other factors the Board identified. They're
9 not as important, as set out in the combined proceeding,
10 but customer preference.

11 You know, here -- and I am obviously going to have to
12 shorten this, but customer preference in respect of
13 phase 7, part I, clearly the evidence was that Mr. Spicer
14 and Multi-Area sought Horizon to provide service, as they
15 had done consistently throughout the past. Asked, in
16 January and July and letters which were filed in evidence,
17 for Horizon to provide service. So clearly they asked for
18 Horizon to do it.

19 Yet they then received, at the 11th hour, a July 27th
20 offer to connect, which would require Multi-Area to pay
21 nothing in the capital contribution, \$20,000. By
22 comparison, they were told it was going to be \$300,000 by
23 Mr. Messervey. You remember his e-mail in February? He
24 estimated -- I should say March, when he did his high-level
25 estimate.

26 At that point, using the higher rates, they came up
27 with the \$300,000 estimate. Well, all of a sudden he gets
28 an offer to connect that says nothing for expansion costs,

1 and by the way, we will include a special clause in there.
2 You may recall we went to that rather unique paragraph,
3 which says: No matter what happens in this proceeding,
4 Hydro One is guaranteeing that the developer won't have to
5 pay.

6 So even if they didn't comply with the Distribution
7 System Code, and you find there should be expansion costs
8 included in that, Hydro One is saying to the customer:
9 Don't worry about it. Maybe our ratepayers will pay.

10 But the point is that, in this instance, there is no
11 clear customer preference. You should not rely on that as
12 evidence of customer preference. Indeed, what you should
13 be, in our respectful submission, doing is looking at the
14 ultimate customers of the subdivisions, which are the
15 homeowners. And they're going to be asked to pay the
16 higher rates that Hydro One will have and do have. And
17 currently the evidence, even with the undertaking response
18 my friend filed this morning, the evidence is, without
19 question, they do not have the ability to apply the urban
20 rate right now. It is the rural rate. And that is what
21 the current customers are paying all along, Highway 56 and
22 all of the legacy customers.

23 But even if they did at some point pull the rabbit out
24 of their hat and come up with an ability to apply an urban
25 rate, it is still higher than Horizon's. That means that
26 -- our respectful submission is that you should be looking
27 at the interests of those customers who are going to be the
28 future owners of the property, and they would prefer the

1 lower rates.

2 So the customer preference in this respect, we say, is
3 either neutral or actually favours Horizon.

4 The Part II customers, they were asked -- Hydro One in
5 February -- sorry, in September, asked by e-mail for
6 Horizon to take over the customers as soon as possible.
7 They withdrew it, and I have stated already the reasons are
8 they want commercial terms. Two of the customers have
9 indicated, and it is filed in an affidavit, that they wish
10 the transfer to proceed.

11 The part III customers have all been put on notice of
12 this proceeding. Hydro One's evidence is that none have
13 indicated any concern or problem with the transfer. But
14 they're suggesting that we've done something wrong, that
15 there is poaching.

16 This is not what happened. Let's just put it into
17 context. Several of the part III customers along Rymal
18 Road are fully embedded. We know that there is an old 8.32
19 circuit along Rymal Road. Wouldn't it make sense to retire
20 that line, as Mr. Burman said, and not incur the costs in
21 the future OM&A to provide the several customers along
22 Rymal Road?

23 The city has expressed a need to widen Rymal Road, the
24 poles on the south side, some of which are going to have to
25 be moved. These are costs which can be avoided.

26 The city has also expressed an interest in the
27 streetscape being improved; thus, we know the poles on
28 Fletcher have to be removed. So these things are all

1 consistent with dealing with the part III customers.

2 So, indeed, by seeking a service area amendment, it is
3 consistent with what Hydro One asked to be done in respect
4 to the Fletcher Road properties in any event, and it is
5 also consistent with these other positive things and to
6 avoid future costs.

7 So it is not a matter of poaching. It is a matter of
8 making this a comprehensive application to deal with these
9 things all at once.

10 In terms of part IV, of course we know that the school
11 board has said unequivocally, no, they do not want service.
12 I am sure that Mr. Shepherd will have more to say about
13 that.

14 But, clearly, if customer preference is a matter of
15 importance, in this case, because the ST rates are similar
16 to the GS rates, the combined proceeding actually says that
17 in those instances where the rate impact on the customer is
18 neutral, customer preference should carry the day. And it
19 says that at paragraph 233 of the combined proceeding.

20 So at the end of the day, the customer has said the
21 rates are about the same. We want to go with Horizon. In
22 our respectful submission, based upon the language of the
23 combined proceeding, is that you should follow their will.

24 How long do I have, Madam Chair?

25 MS. CONBOY: Three minutes.

26 MR. O'LEARY: I will then simply do two last things.
27 The first is to confirm that another issue is the impact on
28 customers in the area, and so stranded assets is one

1 question. The evidence is at page 183, transcript
2 volume 2. There is \$15,000 in stranded assets.

3 Horizon Utilities' witnesses said that may be high.
4 We think a lot of these are depreciated. We're not talking
5 a lot of money. Horizon witnesses admitted that if those
6 are the stranded assets, they will be paid.

7 We have also raised a number of concerns about Hydro
8 One's ability to apply the urban rate. I don't have time
9 to get into that in detail, but if you look at the
10 evidence, it is clear that, first of all, Mr. Stevens
11 stated in his evidence in-chief that for an urban rate to
12 apply, it should be 3,000 contiguous, and Mr. -- that was
13 at transcript page 41.

14 Then Mr. Zerdin, I asked him whether or not the urban
15 area of Hamilton was contiguous with Binbrook. The answer
16 is no. The only way they can apply an urban rate is to
17 combine the two. We submit that is just not consistent
18 with their rate class and rate order.

19 Madam Chair, we heard -- and it is important that I
20 quickly state this, because my friend may want to respond
21 to this. We have heard Hydro One is going to build this
22 line down Rymal Road, even if you grant all five service
23 area amendment applications. So it won't have a single
24 customer along 3-1/2 kilometres, but it is going to build
25 this.

26 Of course it has to say that, because if it didn't, it
27 would then look like it is only doing it for these parts.
28 But the point is, it shouldn't happen. Economic efficiency

1 and cost-effectiveness, the promotion of those objectives,
2 should not permit that to occur.

3 The Board, in the combined proceeding, at paragraphs
4 128 to 130, looked at its powers under section 70(6). That
5 is the section that says that no utility may claim
6 exclusivity in respect of any particular area.

7 But it also says: Unless otherwise stated in the
8 licensed -- in the service area, in the description of the
9 service territory.

10 So you are obliged to include a geographic description
11 in the service territory which is attached to each
12 distributor's licence.

13 And our submission is that you have, and you have
14 acknowledged it at that paragraph in the combined
15 proceeding, the ability to actually include an area as
16 being exclusive.

17 Horizon Utilities is hereby applying for an amendment
18 to its licence to make that area along Rymal Road, which
19 Hydro One wishes to follow for its 27.6 -- so the diagonal
20 loop up towards Rymal Road and along Rymal Road -- Hydro
21 One is saying they're going to do it regardless of your
22 decision here.

23 You have the authority to include in the Horizon
24 Utilities' licence, in the description of their service
25 areas, an area of exclusivity and we are asking for that.

26 MS. CONBOY: Thank you.

27 Mr. Shepherd, I've got here 15 minutes.

28 **CLOSING ARGUMENT BY MR. SHEPHERD:**

1 MR. SHEPHERD: Thank you, Madam Chair.

2 I have -- I want to explain to the Board that School
3 Energy Coalition deals with this at three different levels.
4 There is a general issue: Who should serve the urban areas
5 of the edges of growing cities? There is a specific issue,
6 this growing area of Hamilton, which has potentially five
7 schools in it, and then there is one school that is under
8 construction, Bishop Ryan. You saw Mr. Morrissey in the
9 room very concerned that the interests of that customer at
10 that site be looked after in this proceeding. So I am
11 going to deal with all three of those levels.

12 Let me start with the highest level, the general
13 level, because the Board will be aware that the School
14 Energy Coalition intervened in this proceeding before we
15 even knew there were specific schools directly affected.

16 We knew there might be, because where are the schools
17 built? They're built in the new suburban areas. But the
18 reason why we intervened is because we're concerned that
19 Hydro One appears to be, in this case and maybe in others,
20 seeking to augment its customer base through new suburban
21 customers.

22 Why would we care? Well, I think the simple answer is
23 Hydro One charges more for distribution than other LDCs.
24 It is as simple as that.

25 You know, there was lots of discussion in this
26 proceeding, and there will be today, I'm sure, about who
27 can serve these customers more cheaply. Sometimes I felt
28 like I was in a parallel universe. Everybody in this room

1 knows who is the more expensive distributor in the room.
2 It is Hydro One. It's not a little. It is twice as much.
3 It is not a small difference.

4 If you go back and look at the most recent rates for
5 the two distributors, or for all of the distributors in the
6 province -- and, by the way, Hydro One's rates are not even
7 on the OEB's list of rates on the website.

8 But if you go and look at the rate orders and do the
9 comparison, the two highest rates for residential customers
10 in the province are Hydro One's R1 and R2 right now.

11 Number 4 in the province, the highest -- the fourth
12 highest rate is the UR class. We're talking about -- just
13 back of the envelope, we're talking about rates that are
14 160 percent of the average, 190 percent of the average, 340
15 percent of the average in the province.

16 And don't misunderstand me. I am not slugging Hydro
17 One. I'm not saying, Oh, they're a bad utility. Not in
18 the slightest, because in fairness to them, you just need
19 to look at a map; they have a density of 10 kilometres per
20 customer -- or ten customers per kilometre of line, sorry,
21 whereas an average utility is 40, 50, 60 -- some of them
22 are 80 and more -- customers per kilometre.

23 You cannot possibly have rates that are similar to
24 Horizon, for example, if you're saddled with a
25 responsibility and you're built, you're a utility that is
26 built to serve customers in a low-density environment.
27 They're built for that purpose.

28 And so I want to draw your attention -- and maybe K3.3

1 is the easiest way to do this -- I want to draw your
2 attention to the visuals here that make this obvious.

3 If you take a look at K3.3, just because it is handy,
4 you will see that the subject area is in the bottom right
5 corner of the grey area. Do you see that?

6 And if you just look visually, everything to the north
7 of it is urban. Everything to the south of it is
8 agricultural and rural, except for Binbrook.

9 This is not a surprise; Hydro One was built to serve
10 rural customers. But you have an area, if you think of it
11 as a Venn diagram, you have an area in which the overlap is
12 an urban part of a rural area for Hydro One, and an urban
13 part of an urban area for Horizon. It is not surprising
14 that they're more expensive.

15 Our view and our position is that the Board's
16 jurisdiction in a case like this is based on acting in the
17 interests of the ratepayers. Yes, there's all sort of
18 issues about economic efficiency and productive use of
19 assets, et cetera, but why are those issues there? Those
20 issues are there because it is in the public interest to be
21 efficient, because the ratepayers require it. It is in the
22 interests of the ratepayers to maximize efficiency.

23 And whether you're talking about the rates that are
24 charged to the ratepayers or whether you're talking about
25 how the assets are used so that the costs are, overall,
26 minimized, it is always in the interests of the ratepayers.

27 Our position is the Board's decision in this case
28 should be entirely driven by what's in the best interests

1 of the customers who will be served.

2 Now, I just want to make one general comment, one side
3 comment about that. And that is I'm sure we will hear from
4 Mr. Engelberg and he will say: Well, but what about the
5 other customers of Hydro One? Shouldn't their interests be
6 considered too?

7 And the answer is yes, their interests should be
8 considered too, and efficient use of assets includes an
9 impact on them.

10 But their legitimate interests do not extend to being
11 subsidized by new customers in a suburban area if those
12 customers could be served at a lower cost by another
13 utility. That is not right.

14 Yes, it is right if, all other things being equal, if
15 the other customers benefit from the fact that Hydro One
16 can serve these customers at a similar cost, and as a
17 result the other customers benefit from more customers,
18 economies of scale, all good.

19 These customers, the customers in this area should not
20 be required to pay significantly more in order that Hydro
21 One's other customers benefit. That is not right.

22 So that is the general level.

23 Now, let me turn to the overall subject area, because
24 -- and I'm only going to comment on parts I, IV and V,
25 where we either have or will have schools.

26 And I -- unless the Board asks me to, I am not going
27 to give you the transcript references for most things. I
28 am sure most of the things I'm saying you will remember

1 from the transcript.

2 MS. CONBOY: Thank you, Mr. Shepherd.

3 MR. SHEPHERD: If something strikes you as "did I
4 actually hear that," I have transcript references here that
5 I can give you.

6 MS. CONBOY: Okay.

7 MR. SHEPHERD: But in those three areas, there are
8 schools, one being built, and the two others there are
9 lands set aside or in the official plan for schools.

10 So part IV is Bishop Ryan. I will talk about that in
11 a second when I deal with the third part of my submissions.

12 But parts I and V are owned by a developer, Multi-
13 Area, or related parties. And Multi-Area will build them
14 out and sell the properties to others. That's what they do
15 for a living.

16 And you have heard both utilities. We asked both
17 utilities: Doesn't that mean the developer has a different
18 interest than an end-use customer? And both utilities
19 admit, absolutely, that is true.

20 The developer has a short-term interest. Their
21 interest is in: How much does it cost to connect these
22 customers? They don't have an interest in: How much does
23 it cost to serve these customers later, and how much will
24 these customers have to pay? That doesn't matter to them.

25 And so I guess the important thing to draw from that
26 is there is one end-use customer in the room today. That's
27 the schools. We're affected by three of these parcels, and
28 that end-use customer is concerned about both the initial

1 cost and the long-term cost.

2 And that end-use customer reaches the conclusion, the
3 fairly obvious conclusion, that it is in their interests to
4 be served by Horizon in this circumstance.

5 I -- so the question is what is our position on parts
6 I and V? Is it that the schools in those areas should be
7 served by Horizon, or that the whole parts should be served
8 by Horizon?

9 I think our initial answer is we asked Hydro One: Is
10 it true that the schools should be served by whoever is
11 serving the surrounding area? And their initial answer -
12 and I will give you the transcript reference for this - on
13 the second day is pages 205 and 206. They initially
14 agreed: Oh, yeah. Of course. The schools should be
15 served by whoever is around them, whoever is serving the
16 people around them. It makes sense. And it is common
17 sense.

18 Then they said: Whoa, hang on. No, we're not going
19 to actually agree to that, because we haven't done an
20 economic evaluation. We don't know. Let's see what the
21 schools propose.

22 So -- and that is transcript, second day, page 207.

23 It seems like common sense to us, that the schools
24 would be served by whoever is serving the people around
25 them. Our basic submission is that parts I and V, in their
26 entirety, should be served by Horizon. It seems
27 geographically and from a system point of view, efficient
28 use of the system, to make sense.

1 But in the alternative, we're asking the Board, if the
2 Board denies Horizon's request with respect to parts I and
3 V, we're asking you to specifically say that that's without
4 prejudice to any future decision with respect to who serves
5 the schools in those areas. Those schools will be built
6 sooner or later, and we frankly don't want a developer who
7 is required by law to give us this land but otherwise has
8 no interest. We don't want a developer to influence who
9 serves us.

10 So we are asking you, if you provide that Hydro One
11 should serve these areas, that you expressly say that's
12 with the option of Horizon, in a future proceeding, being
13 determined to serve the schools.

14 Now, I finally want to turn to Bishop Ryan School.
15 And I tried to split this into five minutes, five minutes,
16 five minutes.

17 And there is lots of stuff there, but I only have
18 really a few things I want to highlight, because I think by
19 now the Board Panel understands completely what the story
20 is Bishop Ryan School.

21 So we have this large, 1,500-student school. It is
22 under construction. It is scheduled to open in September.
23 The students are in portables right now; they want their
24 school. The school board has looked at both offers; they
25 got offers from both of them.

26 And they said: You know, the decision in our
27 interests, the decision is we want Horizon to serve us.

28 So there was some discussion about whether -- by Hydro

1 One about whether the school board's comparison was
2 correct. And I have two things to say about that.

3 First, Hydro One was given the opportunity to cross-
4 examine the school board. Or their expert, for that
5 matter, but they were given the opportunity to cross-
6 examine the school board. And they declined to do so.

7 In our submission, as a matter of law, the school
8 board's analysis of what is in their interests is
9 unchallenged. Once they decided they did not want to
10 cross, they no longer can say it is wrong.

11 That's number one.

12 Number two, we asked them about their view of the
13 school board's analysis in our cross. And if you read that
14 section of the transcript, it goes from -- on the second
15 day from 214 to 218. The only thing you can conclude is
16 that they simply back-pedalled as fast as they could.

17 They were asked: Are you challenging their
18 competence? No. Are you challenging their conclusions?
19 No.

20 They got fussed up about how the school board -- the
21 conclusion the school board reached, but they didn't go do
22 their homework on their own data, the data that they have
23 already provided to us, saying they only have four
24 customers in the province - four schools in the province -
25 served at sub-transmission rates. Four.

26 So this would be one great big school, if it is one of
27 those. And no elementary schools, even though they said:
28 By the way, the data is elementary schools.

1 So my final two points are these.

2 The school board has costs and cost risk concerns,
3 including a \$2 million penalty for successful CDM, which
4 Hydro One admits could happen and has not challenged that
5 \$2 million number. They said, It could be right; we don't
6 know. So, in our view, the Board has to accept it as
7 right.

8 The school board has reliability concerns, because if
9 they own the transformer, the transformer could go out.

10 And, finally, it is not surprising that the school
11 wants to be -- Bishop Ryan wants to be served by Horizon.
12 And I took this to the School Energy Coalition reps - not
13 the local school board, the School Energy Coalition reps -
14 and I said, This is what the issue is. And they looked at
15 this map --

16 MS. CONBOY: Thank you.

17 MR. SHEPHERD: -- and they said, And why would it be
18 that the school would be served by anybody other than who
19 is our surrounding them?

20 MS. CONBOY: Thank you, Mr. Shepherd.

21 MR. SHEPHERD: So our submission is the school board
22 interests should be --

23 MS. CONBOY: Thank you, Mr. Shepherd. Mr. Stoll, you
24 also I think said you had 15 minutes.

25 MR. STOLL: That's what we agreed to, yes.

26 MS. CONBOY: Thank you.

27 **CLOSING ARGUMENT BY MR. STOLL:**

28 MR. STOLL: Thank you. I am here for three other

1 utilities, Brant County Power, EnWin and Essex, and we
2 basically wanted to or were concerned that some of the
3 principles from the generic proceeding were going to be
4 changed or weren't being followed, and we wanted to make
5 input on that.

6 So our comments are mainly interested in some of the
7 higher-level issues.

8 In essence, we are concerned that an enhancement
9 project and the individual offers to connect will skew the
10 service area amendment debate, and there is a potential
11 that an enhancement project will be used to ring-fence a
12 utility's service territory and restrict contiguous service
13 area expansions where they would normally make sense absent
14 the project.

15 And while we get -- we can say there is a debate about
16 whether it is an expansion or an enhancement, we think that
17 is a secondary debate to the service area amendment
18 question. That's an issue for the economic analysis for
19 the offer to connect, but we think there is a slightly
20 different analysis in a service area amendment application.

21 Generally -- and we're supportive in this case, given
22 the facts, of the Horizon position.

23 And given the limits, I am not going to repeat a lot
24 of what my friend has said or what Mr. Shepherd has said.
25 I will base my comments on five different areas, one being
26 some of the regulatory changes that have occurred since the
27 generic proceeding; the obligation on an incumbent
28 distributor, because these are unique proceedings; the

1 generic proceeding principles; a couple of comments about
2 planning; and a comment or two about prematurity.

3 The regulatory changes, Mr. O'Leary noted the change
4 in the statutory obligations have gone from an economic
5 efficiency to an economic efficiency and cost-
6 effectiveness.

7 We think that requires a more robust, more complete
8 economic analysis and that the legislature was concerned
9 about the overall use of financial resources and not
10 necessarily about one individual and whether it is an
11 enhancement or an expansion.

12 But society has an interest in the most efficient uses
13 of the assets, be they a distributor, the incumbent, the
14 new distributor and even, in Mr. Shepherd's case, whether
15 the distributors can push off costs to a customer. Those
16 are customers where those costs are costs of providing the
17 service, and there is an interest in the province of having
18 the most economic evaluation at the end of the day for the
19 total cost.

20 We would also note, and this was not raised by my
21 friend, that the Distribution System Code has changed a few
22 times, and one of those changes is in section 3.2.1. And
23 in that February -- and it is the February 3rd, 2004
24 revision. I have a copy of it, but I haven't made copies
25 for everyone -- there was no reference to the appendix B
26 analysis in the economic evaluation.

27 However, when you look at the current version, there
28 is a reference to expansions requiring an appendix B

1 evaluation. I think this gets important later on, because
2 when you are hooking up a new customer, the Distribution
3 System Code contemplates two scenarios. You have a basic
4 connection. If you are a basic connection, go to it.
5 Otherwise, you have an expansion.

6 So there may be need to refine what we think of in
7 those terms. That is the change in the regulatory
8 framework, and I don't think it dramatically changes how
9 you look at these things, but I think it does inform maybe
10 some of the analysis the Board wants to do and provides
11 some further direction as a result of this proceeding,
12 because we do feel that this proceeding will be used in
13 future service area amendment applications.

14 The other -- the next general comment we would like to
15 make is some of the -- frankly, we had a hard time getting
16 to an apples-to-apples comparison, and part of this is, Who
17 bears the onus in these situations?

18 Typically in an OEB proceeding, the applicant bears
19 the onus of making the case. However, a service area
20 amendment is a little bit unique, and there is an
21 obligation on the incumbent.

22 And in the Orangeville case, it was recognized that
23 there was an obligation. I will just read the quote, and
24 it was EB-2012-0181. It says:

25 "Reaching a conclusion with respect to relative
26 economic efficiency was challenging. The
27 applicant for a service area amendment bears the
28 burden of demonstrating that the amendment is in

1 the public interest, and must provide consistent,
2 detailed evidence to meet that standard. At the
3 same time, the incumbent distributor, if it
4 opposes the application, must provide a
5 reasonable amount of persuasive evidence of its
6 own plans and costs, at a level of detail to
7 enable a comparison between the two service
8 proposals. In this case, the economic evaluation
9 provided by HONI was insufficiently detailed to
10 be persuasive."

11 So there is an onus on both parties in these cases,
12 and we have a concern that we never -- it was very
13 difficult to get to a true apples-to-apples comparison of
14 what was the cost of providing service into certain areas.
15 And it really focusses around whether costs, upstream
16 costs, should be allocated for these areas.

17 Horizon provided a scheme of saying, We have upstream
18 costs related to Nebo that we're allocating in this manner.
19 Horizon said it is an enhancement. It's not -- sorry,
20 Hydro One said it is an enhancement. It is not relevant to
21 the proceeding.

22 We have difficulty with that position. The customers
23 in the parts would not receive service without that
24 enhancement, that future enhancement, existing. They're
25 going to share in the benefit of the loop feed. They're
26 going to share in the benefit of the capacity. That
27 capacity needs to be at Nebo to do that.

28 So there should be -- we think there should be some

1 allocation. What the number is, we're not sure.

2 Also, in this -- part of the rationale for not
3 providing certain information, and it was with respect to
4 the school, was because the customer was the "lies along".
5 And we have difficulty with that, because, as I noted
6 earlier, "lies along" is not in the Distribution System
7 Code regarding whether an expansion calculation is done.

8 Is it a basic connection or not? And there is a
9 difference there, and we would note -- and it wasn't
10 discussed here, but when we look at Hydro One's conditions
11 of service, which the Board has reviewed and approved, when
12 it talks about it's either -- a new connection, it's either
13 a basic connection or an expansion.

14 So we asked, Is this a basic connection? And the
15 response was, That's generally a residential term.

16 So if there needs to be some further discussion or
17 clarification of that, we would welcome that, but from what
18 we have seen, it is not a basic connection, or it might be.
19 We can't tell for sure.

20 If it is not a basic connection, then there should
21 have been an economic analysis done, and it should have
22 been done the way appendix B asserts.

23 Okay, I'm just going to have to move on fairly quickly
24 here.

25 With respect to the generic proceedings, we want to
26 talk a little bit about a couple of different principles
27 here, and these basically follow through on the
28 pronouncements by the Board in section 4.1, items 3 and 5.

1 I am not going to read them, for time constraints.

2 And economic efficiency, economic efficiency is a
3 fundamental principle. Item five makes that clear, and the
4 quotation from the Board at 235:

5 "The Board considers that economic efficiency
6 comprises the concept of the most effective use
7 of existing distribution resources. It is a
8 concept that involves an objective assessment of
9 the efficiencies attendant upon the connection of
10 a customer by a distribution utility."

11 And that is an objective assessment.

12 And we think there is, rather than a protectionist or
13 a self-interest perspective that may become the -- may
14 creep into the analysis, people are instructed specifically
15 to step back and look at the overall economic efficiency.

16 And from here, you can see part of the difficulty we
17 had is, in looking at the number of offers to connect, the
18 variations, the option A, option B, whether the project was
19 an enhancement, an expansion, not an enhancement, whether
20 there was allocation.

21 From our perspective, the offer to connect and the
22 service area amendment economic analysis are not
23 necessarily identical.

24 We do find it hard, in respect of certain elements of
25 this part I especially, that no costs would be -- from
26 either Nebo or the 27.6-kV line would be allocable to those
27 customers. We have difficulty with that.

28 As we know, the existing 8.32 line is not sufficient

1 for those customers, for parts I and IV.

2 So the existing assets aren't sufficient. We have
3 future assets that will provide service. Should some of
4 the costs be allocated for the purpose of considering this?
5 I would think it would make sense.

6 With respect -- okay. We've done...

7 I would also like to draw the Board's attention to
8 paragraph 236 of the generic proceeding, which is:

9 "In all instances, the costs associated with the
10 connection should be the fully-loaded costs..."

11 That is, again, supporting our contention.

12 "...and which capture all relevant indirect and
13 direct costs reasonably associated with the
14 project at issue, not merely the price of
15 connection quoted to the prospective customer."

16 Again, we're saying the offer to connect analysis is
17 not necessarily the analysis that has to be done in a
18 service area amendment request. You have to look at
19 different things.

20 From what we know, Horizon has the capacity in its
21 existing feeder. As such, it would appear that a failure
22 to grant the Horizon application would result in Horizon
23 having underutilized assets.

24 In our opinion, you can't say the converse if there is
25 a 27.6 line being built by Horizon down the other side --
26 or Hydro One down the other side of the road, because they
27 said: We would build this line regardless.

28 So the fact that the capacity that may be used to

1 service the areas in question could be served from this
2 line were not relevant to their system. So they were
3 willing to build this line without using that capacity to
4 serve these. It makes their asset more efficient, but they
5 can't say that the underutilization was a factor in their
6 decision.

7 One of the next items we would like to talk about is
8 confusion, and it has been touched on here.

9 And, like, looking at K1.1, it seems obvious to us
10 that having the current service territory is ripe for
11 continued confusion.

12 We would also note that in the generic proceeding,
13 this was discussed. And somewhat ironically, the Board
14 noted when it was outlining people's position, in speaking
15 about embeddeds here, the Board noted the position of both
16 Hydro One and PW, indicating that both expressed concern
17 that the increased complexity in embedding would jeopardize
18 safety. Well...

19 So I think here the issue on confusion clearly favours
20 Horizon.

21 Two minutes? Okay.

22 We will go to customer choice.

23 It is a factor the Board should consider. They have
24 made their choice. One of the concerns we have is that as
25 time passes for the developers, the developer gets
26 squeezed.

27 In Multi-Area, you look at what happened. Seven
28 months went by. They're seeing nothing happen towards a

1 resolution. They have houses going up, roads going in.

2 They're saying: I need a solution.

3 Our concern is that that will induce a less efficient
4 result, because they will take a deal that works, just to
5 get the certainty of having a deal on the service so that
6 they're not put at risk in selling their homes.

7 We don't think that is right.

8 We also have -- and quickly on planning, there's
9 efforts on regional planning. This issue apparently wasn't
10 discussed in regional planning. We find that difficult.

11 We also have difficulty in that the planning process
12 seems to have changed in the consideration of neighbouring
13 assets. We said -- we asked Hydro One: Do you look at
14 your neighbour sometimes? They say: We did in prior
15 phase, but we didn't in this case.

16 Why not? And they said they didn't. So we have -- so
17 we have a concern that we were trying to get a specific
18 end, rather than an objective assessment.

19 The other thing that Hydro One said or implied was
20 that a utility should never plan for servicing any
21 customers outside its service area. We disagree with that,
22 and we think that it would be imprudent for a utility in
23 certain situations not to plan for service areas that may
24 be outside of its existing territory.

25 We have an issue with the planning justification that
26 was brought forward by Hydro One and --

27 MS. CONBOY: Thank you, Mr. Stoll.

28 MR. STOLL: Okay.

1 MS. CONBOY: We are going to break until five to, when
2 I understand, according to the schedule that I have, that
3 Hydro One will be next; is that correct? And 45 minutes?

4 Okay. My apologies for cutting everybody off. My
5 mother will be very disappointed if she reads these
6 transcripts, but we will see you back at five to.

7 [Laughter]

8 --- Recess taken at 10:36 a.m.

9 --- On resuming at 10:52 a.m.

10 MS. CONBOY: Thank you. Please be seated.

11 **PRELIMINARY MATTERS:**

12 MR. O'LEARY: Madam Chair, just before my friends
13 commence, I have been provided with a copy of a letter from
14 Mr. Vlanich, who is here on behalf of IBEW, which is an
15 intervenor in this proceeding. My understanding is that
16 Mr. Vlanich intends to simply file this as their submission
17 and to avoid -- unless he is intending to -- yes. I don't
18 think he intends to make an oral submission, but would
19 assume it would be accepted and reviewed by the Panel and
20 it would be part of the submissions that are on the Horizon
21 support side.

22 MS. CONBOY: I was under the impression that Mr. Lanni
23 had checked with the parties about submissions.

24 Has anybody got any objections to the submissions
25 coming in, the IBEW's submission being filed in writing?

26 MR. ENGELBERG: Hydro One objects, Madam Chair. It is
27 rather late in the day. The proceeding has had five parts
28 since October. There have been ample opportunities for

1 intervenors to file anything.

2 I think it is rather late in the day. The ship has
3 sailed for filing further evidence.

4 MS. CONBOY: Okay. Well, I understand that it is not
5 further evidence, but it is a final submission that IBEW is
6 proposing to file.

7 Does that make a difference to your objection, Mr.
8 Engelberg?

9 MR. ENGELBERG: Yes, insofar as it doesn't provide
10 evidence.

11 MS. CONBOY: Thank you.

12 MR. O'LEARY: Should we mark that as an exhibit?

13 MS. CONBOY: I am happy to mark that as an exhibit, or
14 it can just come in --

15 MR. LANNI: I am not sure it needs to. Actually, it
16 hasn't been filed through Board Secretary, so we should
17 probably mark it as an exhibit. If I could have a copy of
18 the letter, that would be helpful. Thank you.

19 MS. CONBOY: Sorry, why don't we just take a copy, Mr.
20 Lanni, and then we will -- if that can just be filed
21 appropriately, please, through -- if that can be filed
22 through the document -- the regular process, through the
23 RESS, and then it can be put onto the public record.

24 So we won't mark it as an exhibit today. Thank you.

25 Mr. Engelberg.

26 MR. O'LEARY: Sorry, but I don't believe my friend Mr.
27 Vlanich -- he doesn't appear before the Board, and I am not
28 sure they would know how to file under the RESS. So...

1 MS. CONBOY: Okay.

2 MR. O'LEARY: We could e-mail it in, I guess.

3 MS. CONBOY: Why don't you just e-mail it in? We do
4 have parties that do e-mail things in.

5 I am assuming that if Mr. Vlanich wanted to be an
6 intervenor, that he would be familiar with the process, but
7 at this point let's just go ahead and if you could e-mail
8 it in, please, that would be great and we will deal with it
9 that way.

10 Mr. Engelberg.

11 **CLOSING ARGUMENT BY MR. ENGELBERG:**

12 MR. ENGELBERG: Thank you, Madam Chair.

13 In all its aspects, except for a portion of part IV,
14 the decision for which the applicant is asking the Board
15 goes far beyond the boundaries of this application.

16 The Board is being asked to change previous
17 principles, in effect, to turn the 2004 generic decision on
18 its head. The Board is being asked to create new
19 principles, to open the door to more and more service area
20 amendment applications, to make good planning a much more
21 difficult, if not impossible, task, and to change the
22 landscape of electricity distribution in Ontario.

23 Hydro One submits that the Board should decline
24 Horizon's invitation to do any of those things. Saying
25 this is what the Board is being asked to do is not mere
26 speculation. I think we can assume that the three LDCs,
27 Brant, EnWin and Essex, all of which had no land at stake
28 in this proceeding, intervened for a reason.

1 Were they simply innocent bystanders? They could have
2 chosen to read the decision on the Board's website or they
3 could have become observers in this proceeding, rather than
4 intervenors.

5 Hydro One suggests this participation foreshadows the
6 potential results of the profound decision that the Board
7 is being asked to make.

8 The application is unique in that it asks for the
9 transfer of a development whose owner has chosen to remain
10 with its own LDC by contracting with its own LDC.

11 The application asks for the transfer of numerous
12 existing customers, the great majority of whom have not
13 come forward to support it, and it asks for the transfer of
14 vacant land that may be years away from development.

15 One of the issues to be addressed in looking at all of
16 this application's unique aspects is whether the incumbent
17 LDC's means of providing service to its territory is an
18 enhancement, as contrasted with an expansion, but there are
19 other issues.

20 One of those is whether customers of one LDC should be
21 forced to be serviced by another LDC. The second issue is
22 whether neighbouring LDCs should be planning to serve not
23 only their own territory, but also their neighbours'
24 territories, resulting in speculative duplicative costs
25 which we see in this application.

26 A third issue is whether suspicion and the questioning
27 of motive should prevail over sworn testimony, and a fourth
28 issue is whether an LDC's solicitation of the customers of

1 another LDC is an activity that should be encouraged by the
2 Board and should be rewarded on a going-forward basis.

3 Hydro evidence has been clear throughout this
4 proceeding that all five parts of this application will be
5 served as "lie alongs" by Hydro One's 27.6 kV loop feed to
6 the Binbrook area, an enhancement project that was planned
7 years ago and began being built in 2012 and will be
8 completed within the next few months during 2013.

9 Mr. Stoll has referred to it as the future. It is not
10 the future. It is now. And I submit that the Board should
11 treat it as now and as an existing asset. It is being
12 built. It is on the verge of being completed. It will be
13 here to serve all parts of this application, as they are
14 ready, and the Board should consider it as already
15 finished.

16 Hydro One's prefiled evidence included appendix A,
17 which is the distribution area study for Ancaster and
18 Glanbrook, which shows years of planning for this.
19 Glanbrook, I would point out, includes Binbrook.

20 Hydro One's prefiled evidence also included appendix
21 B, the Dundas area loop feed to Binbrook document. The
22 evidence showed that Hydro One had years ago even pre-
23 framed a portion of the line to Binbrook to 27.6 kV
24 standards so that the enhancement would be cost efficient
25 when the time came to do the work on the ground. This pre-
26 framing is important and should not be ignored.

27 Hydro One's evidence has been clear throughout that
28 Hydro One needed to address the high five-year load growth

1 in the Binbrook area. Mr. Stevens said it was almost
2 50 percent.

3 And Hydro One needed to have adequate facilities to
4 service that load growth reliably, making an enhancement
5 necessary.

6 Hydro One has stated that the 27.6 kV loop feed along
7 Rymal and down to Binbrook is an enhancement pursuant to
8 the Distribution System Code, so I would like to look at
9 that.

10 In section 1.2 of the code, enhancement is defined as:

11 "...a modification to the main distribution
12 system that is made to improve system operating
13 characteristics such as reliability or power
14 quality or to relieve system capacity constraints
15 resulting, for example, from general load
16 growth..."

17 This is the case pointed out by Hydro One's prefiled
18 evidence, IR answers, and sworn evidence on the stand.
19 This fits exactly into the definition of an enhancement.
20 Additionally, when we look at section 3.3 and 3.3.1, we
21 read the following:

22 "A distributor shall continue to plan and build
23 the distribution system for reasonable forecast
24 load growth. A distributor may perform
25 enhancements to its distribution system for
26 purposes of improving system operating
27 characteristics or for relieving system capacity
28 constraints. In determining system enhancements

1 to be performed on its distribution system, a
2 distributor shall consider the following:
3 "(a) good utility practice;
4 "(b) improvement of the system to either meet or
5 maintain required performance-based indices;
6 "(c) current levels of customer service and
7 reliability and potential improvement from the
8 enhancement; and
9 "(d) costs to customers associated with
10 distribution reliability and potential
11 improvement from the enhancement. "

12 Also, 3.3.3 says:

13 "Subject to section 3.3.4, the distributor shall
14 bear the cost of constructing an enhancement or
15 making a renewable enabling improvement, and
16 therefore shall not charge:
17 "(a) a customer a capital contribution to
18 construct an enhancement."

19 I submit to you that what Mr. O'Leary and what Mr.
20 Stoll have asked for is something different. What they
21 really asked for is an amendment to the code to say
22 something that the code doesn't say now.

23 This is an enhancement, but what they would like is
24 for any customer who happens to benefit from an enhancement
25 to pay a capital contribution as if it were an expansion.

26 That doesn't exist. It is either an expansion or an
27 enhancement. The Board doesn't have the ability to say
28 that somebody along the way who happens to benefit from an

1 enhancement has to pay a capital contribution.

2 An expansion is something completely different. In
3 section 1.2, it means:

4 "A modification to the main distribution system
5 in response to one or more requests for one or
6 more additional customer connections that could
7 otherwise not be made, for example, by increasing
8 the length of the main distribution system, and
9 includes the modifications or additions to the
10 main distribution system identified in section
11 3.2.30."

12 When we look at 3.2.30, we see numerous references to
13 "the connecting customer." Even 3.2.30(e), which doesn't
14 refer to "connecting customer," must be interpreted in the
15 context of the other items, A through H, and in the context
16 of the definition of "expansion" in 1.2, which contains the
17 limiting words of:

18 "A modification... in response to one or more
19 requests for one or more additional customer
20 connections..."

21 Hydro One's evidence made it clear throughout that the
22 Hydro One loop-feed to the Binbrook area was not undertaken
23 in response to one or more requests for one or more
24 additional customer connections.

25 Horizon didn't allege that there was a request to
26 Hydro One from a customer or group of customers in the
27 1970s, when the line was originally pre-framed by Hydro One
28 for 27.6 kV along Highway 56.

1 Horizon didn't allege that there was a request to
2 Hydro One from a customer or group of customers in Binbrook
3 for additional service.

4 There was no request from a customer or group of
5 customers in the service area amendment areas, which caused
6 the 27.6 kV line to be built.

7 That's why it is a planned enhancement, further
8 enabled by properly-timed enhancement of Nebo TS, and the
9 work will be completed within the next few months to
10 increase reliability to thousands of customers in the
11 Glanbrook and Binbrook areas, and to have the added benefit
12 of being able to serve the SAA areas.

13 The construction of the enhancement began in 2012. It
14 continues to be completed as we speak, and will be ready
15 within the next few months, in time to serve all the
16 territory and customers encompassed by the application.

17 To arbitrarily saddle Multi-Area with the cost of the
18 planned line, as Mr. Stoll and Mr. O'Leary want you to do,
19 would be unfair, it would be unprecedented, it would be
20 perverse, and it would be contrary to the code.

21 So what we have here is an enhancement to ensure
22 reliability to the growing load in Binbrook.

23 What Horizon needs to do for purposes of this
24 proceeding is to convince you that the line is really being
25 built for the purpose of serving a specific customer,
26 Summit Park phase 7, and Horizon's attempt to turn the line
27 into an expansion to that subdivision.

28 Therefore, against Hydro One's prefiled evidence and

1 sworn testimony, Horizon has based its case on suspicion,
2 suspicion that it was only after Horizon applied to the
3 Board for phase 7 that Hydro One decided to build the loop-
4 feed to Binbrook and chose the route that it chose.

5 Hydro One -- excuse me, Horizon even sought to rely on
6 an e-mail sent by Mr. Messervey of Hydro One that, in
7 Horizon's view, included costs as if the line were only an
8 expansion.

9 The fact is when you look at the e-mail, Mr. Messervey
10 wrote no such thing. His wording in the preamble to
11 Horizon's IR 28 to Hydro One was:

12 "Based on the information I've seen on this site
13 would this project not fall into the category or
14 be considered one that we should support the SAA
15 on? Isn't there approximately \$400,000 of
16 expansion/enhancement just to get our supply to
17 the site?"

18 Mr. Messervey was asking a question. It seems clear
19 that he was generally aware that some kind of work was
20 required in the area to provide additional supply.

21 As stated by Hydro One witnesses under oath, when Mr.
22 Messervey sent that e-mail, not being part of Hydro One's
23 system planning group, he was not aware and it wasn't his
24 responsibility to be aware of the Hydro One enhancement
25 project or plan. Nor would he have been, given his
26 position inside Hydro One.

27 So the e-mail is therefore completely unhelpful in
28 establishing Hydro One's decades of plans and building for

1 the area or in supporting Horizon's allegation.

2 All that Horizon has is suspicion.

3 Contradicting that suspicion are Hydro One's prefiled
4 evidence, which is factual, rather than speculative. There
5 is also the sworn evidence of Hydro One witnesses, and
6 appendices A and B to the prefiled evidence.

7 Horizon sought to bolster its suspicion by filing the
8 Burman report, a report that billed itself as independent
9 but was anything but independent or helpful. It was based
10 purely on the input of Horizon employees and Horizon plans.
11 It did not even try to include Hydro One input. He didn't
12 even contact Hydro One. Yet it makes profound assertions
13 about the present and future state of Hydro One assets in
14 the area. Horizon would seemingly have the Board rely on
15 this one-sided report based on a lack of information,
16 rather than on Hydro One's own documented plans, supplied
17 in evidence and sworn to in oral testimony.

18 Additionally, Horizon tries to paint the Hydro One
19 service territory surrounding the area as rural and
20 moribund, but you heard the sworn evidence of the Hydro One
21 witnesses concerning the almost 50 percent five-year load
22 growth in the Binbrook area, and the need and obligation
23 under the code of Hydro One to have adequate facilities to
24 service that load.

25 I say to you that sworn evidence in a hearing must
26 always prevail over suspicion.

27 All four of the Hydro One witnesses consistently
28 answered the same questions asked multiple ways by Mr.

1 O'Leary. The Hydro One witnesses explained under oath not
2 only the years of advanced planning that foretold the need
3 for the loop-feed, but also the fact that Hydro One has
4 capacity at the TS.

5 Nevertheless, Mr. O'Leary alleged during his cross-
6 examination that the 27.6-kV feeder to Binbrook was an
7 "excuse" to serve phase 7 without requiring a capital
8 contribution from the developer.

9 That allegation by Horizon is unfounded, and should be
10 held up against the sworn testimony of Mr. Stevens and
11 others that Hydro One is proceeding with its planned
12 enhancement to Binbrook on the selected route even if
13 Horizon's application is successful.

14 I suggest to you that Horizon itself recognizes that
15 its suspicion wouldn't be enough to carry the day against
16 sworn evidence, so in addition to making the allegations
17 regarding the purpose of the loop-feed, Horizon is also
18 second-guessing Hydro One's years of planning by alleging
19 that Hydro One should have chosen another route.

20 Mr. Burman and Mr. Freeman both said that Hydro One
21 should have chosen a different route to get to Binbrook.
22 Horizon says another route would be shorter.

23 Mr. Stevens must have provided Hydro One's reasons at
24 least three times during the hearing.

25 The route chosen by Hydro One was chosen for
26 environmental and forestry reasons, since fewer trees will
27 need to be destroyed along the route chosen by Hydro One.

28 It was also chosen for distribution planning reasons.

1 It was lower-cost than other routes, because facilities
2 were planned decades ago, and are currently in existence
3 and have been pre-framed to 27.6 kV.

4 It was also selected because it provided better
5 separation of assets, avoiding failures from the same storm
6 event.

7 And it was chosen because it was good utility practice
8 to leverage assets by being able to serve other customers
9 along the way; in other words, reasonable forecasted load
10 growth.

11 Finally, it provides for future access to the
12 developable lands further to the east of Highway 56, which
13 Mr. Freeman alleged are greenbelt lands, but which the
14 evidence clearly shows are not.

15 In the undertaking or the question asked by Ms. Spoel
16 at the end of the last day of hearing, she correctly noted
17 at page 238 that the urban plan designates the land as
18 agricultural, and that has been updated by the exhibit
19 filed by Hydro One today.

20 But neither of the designations confers protection to
21 the extent of a provincial greenbelt designation. So it is
22 important to state that that is not what these lands are.

23 Horizon also alleged, without knowing the facilities
24 available for Hydro One Distribution at Nebo TS, that there
25 is inadequate capacity for Hydro One at the station, but
26 adequate capacity for Horizon. But at the same time,
27 Horizon acknowledged that it also had to contract for extra
28 capacity at Nebo TS and that it included the load of the

1 service area amendment areas in its forecast as if the
2 entire territory being applied for belonged to Horizon.

3 Horizon failed to mention that the Nebo TS upgrade
4 will be available in phases, with the first portion
5 available in April, three months from now, and the entire
6 upgrade available by the end of 2013, well in advance of
7 the requirements for the development in this area.

8 There was even criticism from Horizon regarding the
9 height of Hydro One's poles, which Mr. Zerdin stated under
10 oath meet Hydro One's standards and which Ms. Lerette then
11 admitted under oath to be a height that Horizon itself is
12 using in other parts of its territory.

13 I submit that when weighing Hydro One's sworn evidence
14 regarding its facilities, its capacity and its route choice
15 against Horizon's opinions regarding Hydro One's
16 facilities, capacity and route choice, Hydro One's sworn
17 evidence should prevail over opinions from the outside.

18 After all, it is the incumbent utility required by
19 section 3.3.1 of the code to be the one responsible for
20 doing the planning for its service territory.

21 Mr. O'Leary advanced the idea that the Electricity Act
22 provision that requires utilities to connect "lie along"
23 customers refers to any utility and that, therefore, it is
24 Horizon that has the obligation to connect customers inside
25 Hydro One's territory.

26 Well, the customers encompassed by this application
27 that "lie along" Hydro One's facilities are in Hydro One's
28 territory. Surely the Electricity Act section must be

1 interpreted to impose the connection obligation on the
2 licensed provider for the territory in which the building
3 lies.

4 I want to stress that not only the Binbrook area and
5 the Elfrida area, the industrial park, but also parts I
6 through V of this application are all entirely within Hydro
7 One's service territory.

8 At first blush, part I might appear to be a run-of-
9 the-mill contested application, but it isn't. This is
10 different from previous SAA applications.

11 The first reason is that the customer isn't supporting
12 the application by the outside utility. The developer
13 chose to go with its own LDC, Hydro One, after receiving an
14 offer to connect from both LDCs.

15 In the developer's submission of October 19th, 2012,
16 the developer's lawyer wrote in his letter:

17 "Since our client is not seeking service from
18 Horizon, Horizon has no customer outside its
19 territory on which to found its application."

20 Hydro One agrees with the customer and says that there
21 is no basis for the Board to award the territory to the
22 adjacent LDC, and Hydro One submits that the signed
23 contract between willing customer and willing LDC, its own
24 LDC, should not, in effect, be abrogated by action of the
25 Board.

26 Hydro One submits that phase 7 should not be severed
27 from Hydro One's licence, because doing so would set a
28 dangerous precedent in which willing customers would be

1 forced away from their chosen service provider inside their
2 own territory.

3 The situation wouldn't be that dissimilar from a
4 problem I will get to in a few minutes, which is the
5 situation where outside utilities apply to serve existing
6 customers of an incumbent. Keeping in mind that Hydro One
7 has borders with approximately 60 or so of the 75 LDCs,
8 representing over 100 different territories, the precedent
9 proposed by Horizon today would have an adverse effect on
10 efficient planning, and that would be to the material
11 detriment of Ontario ratepayers at large.

12 The second reason that part I isn't run of the mill is
13 that like a number of other parts of this application, it
14 contains vacant land on which no houses are scheduled to be
15 built.

16 There may be a school, there may be two schools, there
17 may be a park, but we don't know yet for sure, because
18 there are no set time lines for development and no customer
19 requests for service to these vacant lots; therefore, no
20 economic evaluations for anybody to review, whether that be
21 the Board or the two LDCs.

22 Hydro One's submission that part I should not be
23 awarded to Horizon for the reasons I have stated above
24 would be the case even if Horizon were able to satisfy the
25 Board that its connection costs are lower.

26 But I want to make it clear that even if this were a
27 run-of-the-mill SAA application - in other words, one in
28 which there were a willing customer who wanted to be a

1 customer of the applicant LDC - in those applications,
2 connection costs are the most important factor; not the
3 only important factor, but the most important.

4 Hydro One submits that Horizon has failed to satisfy
5 the onus on an applicant to show that its connection costs
6 are lower, and that position is supported by Multi-Area in
7 the lawyer's letter, which says: Our client determined
8 that Hydro One's offer to connect was economically
9 preferable to that provided by Horizon.

10 I believe I even heard one of the lawyers say this
11 morning that costs are probably similar, not much of a
12 difference.

13 Parts II and III deal with 13 existing customers, some
14 of which are residential and some commercial. It seems,
15 from Horizon's prefiled evidence and testimony, that no
16 customers in part III have expressed support for the
17 application, and only two customer -- excuse me, and only
18 two customers from part III are supporting the application.
19 And those two are supporting it only after being contacted
20 by Horizon by solicitation letters.

21 Horizon has sought to capitalize on Hydro One's views
22 about the three existing customers in part II at a time
23 when Hydro One was unaware of Horizon's intention to try to
24 acquire and serve a massive area, five parts, containing
25 multiple parts of Hydro One's service territory.

26 As stated in Hydro One's IR answer on that matter and
27 in Ms. O'Sullivan's testimony, the answer is simple. It
28 was no longer practical to deal in isolation with three

1 customers involved in a vast expanse of Hydro One territory
2 sought to be acquired by the adjacent LDC.

3 Regarding the solicitation letters I mentioned,
4 Horizon's own prefiled evidence shows the solicitation
5 letter sent by Horizon to Hydro One's customers inside
6 Hydro One's service territory prior to their filing their
7 SAA.

8 Hydro One submits it is improper for LDCs to solicit
9 each other's existing customers and that to permit such a
10 practice would change the face of electricity distribution
11 in Ontario in a way that does not benefit the public
12 interest or ratepayers.

13 I also submit to you that the solicitation letter was
14 not even truthful or fair. If you look at the letter
15 template in Horizon's prefiled evidence at page 27 of 29 as
16 part II, attachment 5, Horizon wrote in the second
17 paragraph:

18 "It occasionally becomes necessary to 'deal with'
19 properties like yours at or near the boundary of
20 a neighbouring utility."

21 And I ask the Board today, after all you have heard,
22 why did it become necessary to deal with these properties?

23 Let's take, for example, the existing ten Hydro One
24 customers in part III who have been served by Hydro One for
25 years. I submit that we heard no evidence from Horizon as
26 to why it supposedly became, quote, "necessary" for them
27 to, quote, "dealt with" in 2013.

28 So I would like to move on to part IV, where there is

1 a school being built. Except for the fact that Horizon has
2 included some vacant land in part IV, as Horizon has done
3 in a number of other parts, part IV is the only part of
4 this application that isn't precedent-setting, in the sense
5 that it looks like a traditional application for an SAA in
6 which a new customer wants service and prefers the service
7 to be by the non-incumbent LDC.

8 But the facts merit review. The school is entirely
9 within Hydro One's service territory. Horizon agreed that
10 it mistakenly thought the school was inside its service
11 territory, and that it therefore mistakenly provided a
12 temporary connection to the school for construction
13 purposes.

14 This is being relied on as an example of confusion. I
15 suggest to you that this idea has been floated in a number
16 of previous SAA applications.

17 There is no confusion by customers in Ontario as to
18 who their LDC is. They get a bill once a month or once
19 every two months from their electric utility. They know
20 who it is. They know who to call when we have a problem.
21 This is simply an example of a new customer who did not
22 know whom to call for a connection. And of course that is
23 going to happen.

24 Horizon acknowledged that when informed about the
25 connection, Hydro One cooperated to permit the continued
26 temporary connection during construction so that the
27 construction would not be prejudiced.

28 The school prefers the Horizon offer and has accepted

1 it, seemingly because the school prefers not to own a
2 transformer. We heard evidence last week concerning
3 disagreement as to what a transformer would cost the school
4 to buy and maintain. Hydro One's evidence was that the
5 costs are significantly lower than what was estimated by
6 the school, and further, that the school could easily
7 contract for the service if it chose not to exercise the
8 responsibility.

9 Hydro One's evidence also showed that Hydro One's
10 monthly electricity delivery charges are lower than
11 Horizon's.

12 Like parts I, II and III, another part of the
13 application that is unprecedented is part V. Part V is
14 only vacant land which is entirely in Hydro One's
15 territory, east of Summit Park phase 7, slated at some time
16 in the future to be Summit Park phases, both residential
17 and commercial.

18 Ms. Butany-DeSouza stated that Horizon decided to
19 apply for the territory now because doing so seemed to be:

20 "In the interests of efficiency of not bringing
21 forward a number of other service area amendment
22 applications that included part V."

23 That's at page 185 of the first day transcript.

24 But the evidence shows that there are no grounds, no
25 basis whatsoever for an application for part V. Both LDCs
26 stated in their testimony that no economic analysis has
27 been done.

28 Hydro One submits that there is no information on

1 which the Board could possibly find that Horizon has
2 satisfied the onus on an applicant to be awarded the
3 territory of the incumbent.

4 As a matter of fact, the Board already dismissed the
5 exact same request by Horizon in EB-2004-0536, when Horizon
6 applied for vacant land slated for future Summit Park
7 phases.

8 As I said before, the generic decision principle and
9 the Board's principle is that the onus is on the applicant
10 to satisfy the Board that the territory should be taken
11 away from the incumbent. The onus is not on the incumbent
12 to satisfy the Board as to why it should be allowed to keep
13 the territory.

14 Hydro One acknowledges that it has a responsibility,
15 as was quoted from the Orangeville decision, to provide
16 some level of evidence, and Hydro One submits that it has
17 done that and more than done that.

18 I spoke about all of the planning that was done by
19 Hydro One over the years to ensure reliable service to the
20 Binbrook area, so I would like now to make some submissions
21 regarding what LDCs must do and what they must not do.

22 Horizon admitted that it made plans to serve portions
23 of Hydro One territory and to serve Hydro One customers.
24 Hydro One stated that Hydro One did so, too.

25 On the second hearing day, Horizon fulfilled an
26 undertaking that it gave on the first day. The Horizon
27 response showed that Horizon planned for 4.75 megawatts of
28 load at Nebo TS that isn't even Horizon load. This is by

1 Horizon's own admission. It is load predicted to
2 materialize inside Hydro One's service territory.

3 I submit that this is one of the very scenarios that
4 the principles of the generic decision were meant to
5 prevent: duplicate planning by duplicate utilities for the
6 same customers in the same territory.

7 This is further borne out by Horizon's statement that
8 it "assumed" that Hydro One would consent to give away
9 Summit Park phase 7.

10 Hydro One's evidence said, and my legal submission to
11 you now is, no LDC should make plans to build to serve the
12 territory and customers of other LDCs. It should never
13 happen.

14 Hydro One also says as a matter of fact, and I submit
15 to you as a matter of law today, that an LDC should never
16 assume that an adjacent LDC will consent to a future SAA
17 application.

18 MS. CONBOY: Mr. Engelberg, I'm sorry. I have been
19 trying to figure out the right time to ask this question.

20 But when you have spoken a few times about that
21 distribution companies should not be doing their planning
22 for outside their service territory, that they should only
23 plan for inside their service territory. Does that -- how
24 is it that they -- how do I put this?

25 The fact that Hydro One's service territory is
26 essentially defined as everything in Ontario except for the
27 service territories of other LDCs, the unique nature in
28 which Hydro One's service territory is defined in their

1 licence.

2 Does that -- should we be taking that into
3 consideration at all?

4 MR. ENGELBERG: No, Madam Chair. In my submission,
5 you should not.

6 The fact is that what that definition creates is clear
7 borders between LDCs and Hydro One. The definition was
8 done that way simply because it was easier, once you had
9 defined the territories of the LDCs, not to go through the
10 entire province and give boundaries of Hydro One's service
11 territory. It wasn't necessary to do so, because you could
12 say it is everything outside the territory of the LDCs.

13 So Hydro One's territory is clearly defined by its
14 licence, and no consideration should be placed on the form
15 in which that definition was provided.

16 MS. CONBOY: Thank you.

17 MR. ENGELBERG: I would also like to point out in that
18 regard that Mr. Stoll, I believe, mentioned the
19 capabilities and knowledge of urban LDCs and urban
20 customers. Or perhaps that was Mr. Shepherd. I don't know
21 which of the two of them.

22 The fact is Hydro One services more urban customers in
23 Ontario than Horizon does, over 300,000 customers.

24 So that is a distinction without a difference.
25 Horizon has no benefit over Hydro One in knowing urban
26 customers or building for urban customers.

27 Now, Hydro One says that it isn't prudent for any LDC
28 to make an assumption that it might apply for and be

1 successful in a future SAA application, and that it wasn't
2 prudent of Horizon to do so. And there is no excuse for
3 Horizon to have discussed -- excuse me. There was no
4 excuse for Horizon not to have discussed the matter with
5 Hydro One Transmission.

6 MS. CONBOY: I am trying to avoid interruption, not
7 continue it. Please go ahead.

8 MR. ENGELBERG: Okay. There is no excuse for Horizon
9 not to have discussed the matter with Hydro One
10 Transmission and Distribution.

11 For LDCs to plan for load inside other LDCs' territory
12 would set an unwieldy precedent that is harmful to
13 ratepayers, because it duplicates the planning of the in-
14 territory LDC.

15 Such activity should not only not be rewarded, it
16 should be discouraged. And I say to the Board today that
17 you should discourage such activity. You have heard
18 evidence in this proceeding as to the wasted costs that
19 have been incurred by double-planning here, and by Horizon
20 not having informed Hydro One Transmission or Hydro One
21 Distribution that, when planning their load at Nebo TS,
22 they included almost five megawatts of Hydro One load.

23 I say to you that such a precedent would introduce
24 chaos into what has been a well-understood practice until
25 now.

26 As you will find in Hydro One's prefiled evidence and
27 you heard from Mr. Stevens, there is a loss to an incumbent
28 LDC and its ratepayers if its territory is awarded to

1 another LDC. It is not just poles and wires that are lost.
2 It is the loss of future customers. It is the loss of a
3 future income stream from them. It is the underused feeder
4 positions at the transformer station that were built with
5 the support of a \$7 million contribution to the transmitter
6 for greater capacity to serve load that may never
7 materialize or may materialize many, many years later than
8 modelled.

9 It is the feeders already framed by Hydro One and in
10 various degrees of completion that will be underused.

11 It is the lost opportunity to Hydro One ratepayers to
12 benefit from lower unit costs of back office systems and
13 processes from the customer information system, the call
14 centre, the grid control centre, part of the smart grid
15 project.

16 In addition, Hydro One's evidence is that this area is
17 on a very near-term path to becoming zoned as urban from a
18 rate class perspective, and it is about to be an urban
19 cluster for Hydro One. So for the incumbent to lose the
20 growth opportunity that may deprive customers in the area
21 of the benefit of the pending reclassification is a real
22 loss to ratepayers and is not in the public interest.

23 So the list of what is lost by an incumbent and its
24 ratepayers when territory and customers are awarded to
25 another LDC goes far beyond poles and wires, and Hydro One
26 believes that the Board was thinking of those matters when
27 the Board made its pronouncement at paragraph 267 of the
28 generic hearing. Part of that paragraph reads as follows:

1 "Service Area amendments should not result in the
2 Board-mandated transfer of customers from one
3 distributor to another. Such transfers should be
4 the subject of bilateral arrangements between
5 distributors, wherein all of the issues engaged
6 by such transfers can be addressed. Such issues
7 involve appropriate compensation for any assets
8 stranded as a result of the arrangement. In this
9 way, the interests of the customers of the
10 surrendering distributor can be reasonably
11 protected."

12 The reasoning of the Board was followed by the Board
13 in EB-2005-0504, another application in which Horizon
14 sought, but failed, to acquire several of the same existing
15 Hydro One customers included in this application.

16 Another principle from the generic decision on which
17 Hydro One relies is paragraph 247. It is applicable, in
18 particular, to all of part V of the application and to
19 parts I, III and IV, because all of those parts contain
20 vacant land, and I draw your attention to paragraph 247 of
21 the generic decision.

22 I have stated some of the governing principles from
23 the generic decision and another governing principle that
24 says that the onus is on the applicant. So what does all
25 of that mean in this proceeding?

26 I submit the following: A, vacant land, whether it be
27 part V or whether it be the vacant portions of the other
28 parts, should never be awarded to an applicant by means of

1 an SAA application. This is not even a question of onus or
2 a matter of connection costs, but it is never in the
3 interests of ratepayers to forcibly transfer vacant land on
4 which something may be built in the future, particularly
5 when the uncontroverted evidence is that the incumbent
6 utility has facilities right there to serve future
7 customers.

8 B, existing customers inside an LDC's territory who
9 are properly served by their LDC, as all of the customers
10 that you have heard about to date are - they're all served
11 properly by Hydro One; they're all connected - should never
12 be awarded to an applicant by means of an SAA application.

13 This, too, is not a question of onus or connection
14 costs. It is a matter of common sense that this is not in
15 the interests of ratepayers, and it would change the
16 landscape of distribution and licences in Ontario in a
17 manner that would not be beneficial to ratepayers as a
18 whole, and would be damaging to the present licensing
19 scheme, making planning and building uncertain activities,
20 turning them from a science into an exercise in speculation
21 and risk.

22 C, a new customer inside an LDC's territory, for
23 example, Multi-Area, who wants to be served by its LDC
24 should never be denied by means of an SAA application the
25 right to be served by its own LDC.

26 D, the Board's MAAD process is the process that should
27 be used if the transfer of customers is to take place. The
28 Board's MAADs process is commercial and voluntary and

1 protects the interests of ratepayers at large.

2 Do I have any more time?

3 MS. CONBOY: Yes, you have another minute.

4 [Laughter]

5 MR. ENGELBERG: Well, let me see what I want to say in
6 another minute.

7 One of my friends stated this morning that the school
8 and the homes are embedded. I would like to point out that
9 the homes are not embedded in Horizon territory. The
10 school is embedded, but Hydro One is immediately adjacent
11 to the school.

12 There was also an allegation from Mr. Shepherd that
13 Horizon's rates are half of what Hydro One's rates are. I
14 submit that is incorrect. There was no evidence in that
15 regard. Hydro One's rates have recently been reduced by
16 14 percent. I believe Mr. Stevens mentioned that.

17 And regarding his allegation that Hydro One declined
18 to cross-examine the school board so the numbers can't be
19 questioned, I would like to point out that Hydro One relied
20 on numbers provided by the school in its IR answer.

21 MS. CONBOY: Thank you very much, Mr. Engelberg.

22 MR. ENGELBERG: Thank you.

23 MR. ELSAYED: May I just ask a question? Mr.
24 Engelberg, in the various principles that you described,
25 where do you feel the principle of cost-effectiveness and
26 economic efficiency fit in the overall picture that you
27 just went through?

28 MR. ENGELBERG: Those principles fit throughout the

1 proceeding. Probably the most dangerous way in which
2 they're brought to the forefront is the duplicated
3 planning.

4 If the boundaries that exist today for service area
5 licences are not going to be treated as boundaries -- and
6 surely they can be changed by an amendment application, but
7 until such time as they have been changed, they have to be
8 treated as if they're in existence.

9 And costs and planning and risk assessment would be
10 all thrown out the window to the detriment of the
11 ratepayers if two utilities, or perhaps in some cases there
12 might even be three, who are planning to serve the same
13 service territory, that can't be good for the ratepayers.

14 And when you also consider the immediate location of
15 where a service area amendment crosses, it is just as fair
16 to weigh the costs on the ratepayers in the incumbent
17 service territory, in this case Hydro One, as it is to
18 weigh the effect on the ratepayers in the applicant's
19 service territory.

20 In fact, there is a passage in the generic proceeding
21 that specifically says that present-day rate schedules are
22 not indicative of future rate facts or differentials, and,
23 therefore, they shouldn't be relied on to determine who
24 gets an amendment application.

25 MR. ELSAYED: Thank you.

26 MS. CONBOY: Thank you. Mr. Stephenson, I've got you
27 down for 15 minutes. Is that correct?

28 MR. STEPHENSON: Thank you, Madam Chair.

1 **CLOSING ARGUMENT BY MR. STEPHENSON:**

2 I have distributed just this morning a document that I
3 am going to refer to in a moment. It is an extract from
4 the Hydro One Distribution conditions of service.

5 My friend Mr. O'Leary included an excerpt in the
6 materials he distributed this morning. This is a different
7 excerpt from the same document. It is the Board-approved
8 conditions of service for Hydro One.

9 MS. CONBOY: Thank you, Mr. Lanni.

10 MR. LANNI: If we can mark that as an exhibit, K3.5,
11 and that is Hydro One Networks' distribution customers'
12 conditions of service excerpt.

13 **EXHIBIT NO. K3.5: HYDRO ONE NETWORKS' DISTRIBUTION**
14 **CUSTOMERS' CONDITIONS OF SERVICE EXCERPT.**

15 MR. STEPHENSON: There are three points I would like
16 to make this morning. One is to address the issue of the
17 Binbrook loop enhancement or expansion. The second item is
18 to talk about the relevance of the concept of "lie along"
19 customers, and the third point I want to discuss is the
20 impact of the combined hearing or the generic hearing and
21 its application here today.

22 With respect to the issue of the Binbrook loop, we
23 have heard the very clear evidence from Hydro One that it
24 is -- it is under construction. It continues to be under
25 construction, and it will be constructed regardless of the
26 outcome of this decision.

27 I think it is important for everybody to remember
28 that, of course, LDCs don't need Board approval to build

1 distribution lines. This is not like a transmission
2 expansion, where there is the need for Board approval in
3 certain circumstances.

4 I adopt the submissions of my friend, Mr. Engelberg,
5 regarding the fact that this is, in fact, an enhancement
6 project under the Distribution System Code. My friend Mr.
7 Stoll indicated that there would be some kind of perverse
8 incentive somehow if the Board accepted that proposition in
9 this case.

10 My point is really this. There is a mechanism under
11 the Distribution System Code for persons who think that a
12 distributor is violating its obligations under the code to
13 challenge that. There is a mechanism that comes before
14 this Board.

15 And if somebody wants to challenge whether or not
16 Hydro One is or is not in compliance with the Distribution
17 System Code in the manner in which it is dealing with the
18 Binbrook loop, there is a mechanism to do that. And that
19 could have been done, and it may well be done in the
20 future, but that is not this proceeding.

21 In my submission, the way to think about the
22 significance of the Binbrook loop is this. Let's assume
23 that Hydro One had completed the Binbrook loop yesterday.
24 What would the significance of it be, then?

25 In my submission, the position that Hydro One has
26 advocated in this case in terms of how it applies to these
27 various service area amendments would be very clear: It is
28 there, in this hypothetical. It could have been built

1 yesterday or last year. It is, for the purposes of that
2 hypothetical, it is in the ground; it is there.

3 And you have to consider Hydro One's submissions on
4 the basis that it would then have the line lying along
5 immediately above.

6 And my submission is: What difference is there in the
7 actual circumstances of this case relative to that
8 hypothetical? In my submission, there is none, because we
9 have the situation here where Hydro One is, in fact,
10 building the line. It will be built. It is -- for the
11 purposes -- for all practical purposes, as Mr. Engelberg
12 says, it is, in fact, in the ground.

13 Let me just deal with one last issue about the
14 Binbrook loop, which is the issues about the lack of detail
15 about the cost of the Binbrook loop.

16 Either Mr. Engelberg is right that it is an
17 enhancement project -- a position I agree with -- or Mr.
18 O'Leary is right that it is an expansion project.

19 The bottom line is the precise details of the cost of
20 that loop are completely a red herring. To the extent that
21 the cost -- if Hydro One is required to include the cost of
22 the Binbrook loop as upstream costs, everybody understands
23 that its costs will be higher than Horizon's. If it does
24 not have to include those costs, the situation changes
25 completely. And so what the particulars of those costs
26 actually are, frankly, is a complete red herring. We all
27 know what the outcome is, depending upon -- the issue here
28 is how do you treat that line, not what its cost is.

1 That is all I have to say about the Binbrook loop.

2 Let me deal with the issue about the "lie along"
3 customers. This is an issue particularly with respect to
4 part IV of the application, the school.

5 There is some suggestion that Hydro One is just wrong
6 about the fact that the school is a "lie along" customer.

7 My friend Mr. O'Leary says that: Can any customer
8 regardless of size be a "lie along" customer such that they
9 are -- you are entitled to connect them with no expansion
10 costs, or no connection costs?

11 And the answer to that -- and he suggests that somehow
12 this is a residential kind of term. The answer to that is
13 located in two places.

14 First, it is located in the Distribution System Code.
15 Section 3.1.4 of the Distribution System Code and 3.1.5
16 deal with the issue of basic connections, and a basic
17 connection is how you connect a "lie along" customer.
18 3.1.4 deals with residential customers. 3.1.5 reads as
19 follows:

20 "For non-residential customers, a distributor may
21 define a basic connection by rate class and
22 recover the cost of connection either as a part
23 of its revenue requirement or through a basic
24 connection charge to the customer."

25 So it is up to -- so clearly the Distribution System
26 Code contemplates non-residential "lie along" customers
27 where the basic connection is done free of charge to the
28 customer and included in the distribution -- the

1 distributor's revenue requirement.

2 But it will depend upon what the distributor does.

3 And so in this case -- and this is why I would like to take
4 you to K3.5, Hydro One conditions of service -- you will
5 see, turning to page 16, which is on the back of the first
6 page, we've heard that the school is a sub-transmission
7 customer of Hydro One. And it indicates at point D at the
8 bottom of page 16:

9 "Service to sub-transmission customers provided
10 of voltages above 13 kV may be a basic connection
11 or an expansion."

12 Then it goes on and carries on. So indicating for
13 sub-transmission customers it may be a basic connection.

14 If I can just take you a couple of pages further
15 along, at page 89, there is a discussion starting there
16 about sub-transmission customers. And if we go on to page
17 90, which is the last page of the excerpt I have given to
18 you, at halfway down the page, capital A, "Connection and
19 Upgrade Charges":

20 "A sub-transmission customer who makes a written
21 request for a connection and whose building lies
22 along a Hydro One existing distribution line
23 shall pay Hydro One connection charges in
24 accordance with section 2.1.1."

25 And if we can just go back now to page 22 to section
26 2.1.1, and you will see:

27 "Where a customer makes a written request to
28 Hydro One to connect a building that lies along

1 Hydro One's distribution system, Hydro One shall
2 provide a connection. Hydro One provides a basic
3 connection at no charge for all customers,
4 excluding those who want to connect an embedded
5 generation facility. The basic connection
6 consists of..."

7 And then sub Roman numerals (i) through (v).

8 So the bottom line is, in accordance with Hydro One's
9 conditions of service, it provides a basic connection to
10 sub-transmission customers, which includes a basic
11 connection, a free component -- that is, at no charge to
12 the customer -- which is included in the revenue
13 requirement of the distributor, all of which is in
14 accordance with the provisions of 3.1.5 of the Distribution
15 System Code.

16 So there is no -- there's no magic or mystery about
17 that. The school qualifies.

18 The last thing I want to speak to is -- is about the
19 decision in the generic proceeding.

20 I was expecting, frankly, to hear Mr. O'Leary tell us
21 why this case was different than the generic proceeding and
22 why the rules or principles of the generic proceeding
23 should not apply.

24 I was surprised this morning that he is not suggesting
25 that it doesn't apply. He is, in fact, seeking to rely
26 upon it. There are two principles in the generic
27 proceeding, which clearly eliminate parts of his decision
28 -- parts of his application. That is the existing

1 customers, and that's part II and part of part III, and the
2 vacant land, which includes all of part V, a part of part
3 III and part of part IV.

4 Those are two clear principles coming out of the
5 generic decision, for which there is no answer in this
6 case. If you are going to apply the generic decision --
7 and in my submission there is no good reason not to, and
8 none has been given -- you should not -- those two aspects
9 should fall immediately.

10 I adopt the submissions of my friend Mr. Engelberg
11 regarding part I, which is de facto an existing customer in
12 the current circumstances.

13 Let me just say one part about the existing customers
14 just to be very clear about this. My friend Mr. O'Leary's
15 client was a participant indirectly in the generic
16 proceeding, and in that case it took the position at
17 paragraph 256 that a service area amendment application
18 should not be permitted to include existing customers, the
19 very thing they're seeking to do here.

20 They were a part of what is called the LDC coalition,
21 which specifically took the position that existing
22 customers should not form part of service area amendment
23 applications.

24 And the last thing I just wanted to say is that we
25 heard this morning for the very first time that Horizon is
26 seeking as a part of this application a provision that it
27 be granted -- not only that it be permitted to serve these
28 new areas, but that it be permitted to serve them

1 exclusively.

2 In my submission, not only is that submission
3 unsupported by anything on the merits. This is a little
4 late in the game to make a pretty fundamental amendment to
5 your application.

6 Who knows how this proceeding would have gone ahead
7 differently with different evidence, different examinations
8 and so forth? In my submission, that aspect of it clearly
9 should be denied, regardless of anything else, simply on
10 the basis that you cannot amend at this late date. Those
11 are my submissions. Thank you very much.

12 MS. CONBOY: Thank you very much, Mr. Stephenson.

13 Mr. Malcolmsen, I believe you are next. I have you
14 down for ten minutes; is that correct?

15 MR. MALCOLMSON: That's correct. And I will try to
16 keep it under that limit.

17 MS. CONBOY: Thank you.

18 **CLOSING ARGUMENT BY MR. MALCOLMSON:**

19 MR. MALCOLMSON: Multi-Area's interest in this
20 proceeding as a customer is three-fold: First, to ensure
21 the provision of electrical service to its subdivision on a
22 timely basis; second, to resolve once and for all which
23 utility, Hydro One or Horizon, will provide service both to
24 the subdivision lands, which are part I, and the vacant
25 lands that comprise part V of the service area amendment;
26 and, third, to ensure that service is provided at the
27 lowest incremental cost of connection for the customer
28 here, Multi-Area.

1 Subsequent to the filing of Horizon's service area
2 amendment application for the phase 7 lands, which occurred
3 in June 2012, Multi-Area first became aware that the in-
4 territory service provider, Hydro One, wished to provide
5 service.

6 This expression of interest led to the execution of a
7 binding offer to connect between Hydro One and Multi-Area.

8 By a letter dated July 24th, 2012, Multi-Area advised
9 the Board that it had accepted Hydro One's offer to connect
10 and that it no longer required service from Horizon.

11 Multi-Area's expectation at this point in time was
12 that this would be the end of the matter and service would
13 be provided by the in-territory LDC on an uncontested
14 basis.

15 Unfortunately, this did not occur and Multi-Area has
16 been caught in limbo ever since, while two distributors
17 argue over territory.

18 As the Board recognized in its interim decision in the
19 combined service area amendment proceeding in 2003, and I
20 quote:

21 "There are very serious public interest concerns
22 involved in granting service area amendment
23 applications that affect existing customers."

24 As a result, the Board stated in that same decision,
25 again, and I quote, that it will:

26 "...consider very seriously both the regulatory
27 policy issues and the practical implications of
28 such applications."

1 We'd ask you to apply these principles in this case.
2 This application involves and affects an existing customer,
3 a customer with a subdivision, the completion of which has,
4 to some degree, been shrouded in uncertainty since the
5 dispute arose.

6 This application also potentially impacts home buyers
7 who have purchased houses in the subdivision and who are
8 scheduled to move into their new homes as early as April of
9 this year.

10 What is required from the Board is an expeditious
11 resolution of the matter in order that certainty may be
12 restored and so that the development can continue to
13 proceed without delay.

14 In other words, the practical implications of the
15 application and its effect on an existing customer, Multi-
16 Area, must be considered.

17 While we recognize that customer preference is but one
18 factor in the Board's consideration of service area
19 amendment applications, we ask that the Board take into
20 account the fact that Multi-Area followed what it
21 understood to be established procedure. By agreeing to
22 accept service from the in-territory LDC, once it became
23 aware of Hydro One's desire to provide service to the
24 development, Hydro One and the customer Multi-Area have a
25 binding contract.

26 If part I of the application is approved, it would
27 abrogate an existing contract and it would result in the
28 Board-mandated transfer of a customer from the incumbent to

1 another distributor, a result which the Board has said
2 should generally not occur in the context of service area
3 amendment applications.

4 We would like to state briefly for the record that we
5 have had ongoing dialogue with Horizon for the purpose of
6 seeking certain assurances in two scenarios.

7 In a scenario where the Board sees fit to approve
8 Horizon's application, we have sought and we've received
9 Horizon's assurance that it will accept the civil work
10 performed on behalf of Multi-Area and to Hydro One's
11 specifications.

12 We've also received the assurance that Horizon will
13 use reasonable best efforts to provide timely service to
14 the subdivision if its application for part I is approved.

15 We have received Horizon's further assurance that it
16 will not frustrate the provision of service by Hydro One in
17 a scenario where the Board decides to deny Horizon's
18 service area application and the lands are serviced by
19 Hydro One.

20 We had also sought the assurance from Horizon that if
21 part I of its application was approved, it would agree to
22 provide service on terms that are not materially less
23 favourable than those reflected in the Hydro One offer to
24 connect.

25 We believe this to be a reasonable request in the
26 circumstances. In our submission, it would be consistent
27 with the Board's finding in the combined proceeding that
28 amendments that involve contiguous distribution companies,

1 but that are not opposed by the incumbent, may be in the
2 public interest where the amendment results in the most
3 effective use of existing distribution infrastructure and a
4 lower incremental cost of connection for the customer.

5 In Multi-Area's case, Horizon has not been able to
6 commit to connection at a lower incremental cost than Hydro
7 One.

8 If the Board does decide to award Hydro One's
9 territory to Horizon by approving part I, we submit that it
10 would be in the public interest and consistent with the
11 Board's objectives to ensure that Horizon provides terms of
12 connection to Multi-Area that are comparable to those set
13 out in the binding agreement between Hydro One and Multi-
14 Area.

15 In our submission, this would be a reasonable
16 assurance for the Board to impose in these particular
17 circumstances.

18 Finally, as a customer with a development that needs
19 to be energized on a timely basis, Multi-Area's paramount
20 concern is certainty, certainty in terms of supplier and
21 certainty in terms of cost.

22 Throughout the process, Multi-Area has played by the
23 established rules. It has based its understanding that
24 Hydro One's work along the Rymal Road was part of an
25 enhancement project and that no further capital
26 contribution would be required.

27 We have a binding offer to connect with the incumbent.
28 We have requested service from the incumbent, and it would

1 seem to us extraordinary and precedent-setting for the
2 Board to overturn an arrangement between the incumbent and
3 an in-territory customer in these circumstances.

4 Indeed, such a determination by the Board would seem
5 to potentially have far-reaching implications for future
6 development proposals located in contiguous areas for
7 distribution system planning and for customers seeking
8 certainty in terms of supply.

9 We thank you for your consideration of our position,
10 and we wish you well in your deliberations.

11 MS. CONBOY: Thank you very much, Mr. Malcolmson.

12 Mr. Lanni, you are next. I believe I have you down
13 for 15 minutes.

14 **CLOSING ARGUMENT BY MR. LANNI:**

15 MR. LANNI: Thank you. Board Staff's submissions will
16 consist briefly of a brief overview of the Board's
17 jurisdiction in regard to service area amendment
18 applications, and then we will highlight some of the issues
19 most germane to the Board's determination of this
20 proceeding.

21 So the decision with reasons in the RP-2003-0044
22 combined service area amendment proceeding, that interim
23 decision, part I, dealt exclusively with jurisdiction.

24 And I won't go through it all, but suffice to say that
25 it clearly recognizes the authority of the Board to
26 consider applications for amendments to licences and to
27 grant them where it finds it in the public interest to do
28 so.

1 It also explicitly addresses the question of non-
2 exclusivity of licensed service areas by stating, in part -
3 and this is section 70(6) of the OEB Act:

4 "Unless it provides otherwise, a licence under
5 this Part shall not hinder or restrict the grant
6 of a licence to another person within the same
7 area and the licensee shall not claim any right
8 of exclusivity."

9 Section 70(2)(c) also empowers the Board to require a
10 successful applicant to enter into agreements which can
11 redress any demonstrable inappropriate prejudice to an
12 incumbent service provider and to ensure that compensation
13 is provided.

14 So on the one hand, the OEB Act presumes non-
15 exclusivity of electricity distribution service areas. On
16 the other hand, the Board can exercise a very broad
17 jurisdiction with respect to licensing in general, and
18 service areas in particular, provided that the public
19 interest is protected.

20 Thus, the act gives the Board a range of options, from
21 creating overlapping service areas to prohibiting any
22 incursion by making the licence explicitly exclusive.

23 In the combined proceeding, the Board chose a middle
24 course, and that was to issue licences with non-overlapping
25 service areas, but to receive and consider applications for
26 service area amendments that promote optimal use of
27 distribution resources and overall economic efficiency.

28 Also within -- you have heard a lot about the combined

1 proceeding, and I won't go through it, but it was clear in
2 that decision that the Board's preference was that
3 distributors were cooperatively to iron out any wrinkles
4 between their respective service territories.

5 The Board stated that it would prefer not to impose a
6 specific solution on the parties. The Board stated that
7 amendments should not be resisted by incumbent distributors
8 where the proponent is clearly the most efficient service
9 provider for the affected customer.

10 In the contested applications, however, such as the
11 one before you, the onus is on the applicant to demonstrate
12 that the amendment is in the public interest.

13 Both counsel for the utilities articulated in their
14 own ways the criteria set out in the combined proceeding
15 decision with respect to the service area amendment
16 applications, and I won't go through them.

17 Suffice to say that public interest, economic
18 efficiency, are two -- are the two primary criteria, and
19 they underpin the test used by the Board.

20 Very briefly, in the combined proceeding decision and
21 other service area amendment applications since, the Board
22 has stated that economic efficiency should be a primary
23 principle in assessing the merits of a service area
24 amendment application.

25 When hearing a service area amendment application, the
26 Board must also be able to assess the impacts of the
27 proposed amendment on the distributors involved and their
28 customers and the mitigation of these impacts.

1 The impact assessment should factor in customers both
2 inside and outside the amendment area.

3 In fact, at paragraph 267 of the combined proceeding,
4 the Board stated:

5 "Service area amendments should not result in the
6 Board-mandated transfer of customers from one
7 distributor to another."

8 With regard to customer preference, we've heard from
9 some parties today that it is an important factor, and
10 certainly it is. The Board may, in any service area
11 amendment application, consider evidence of the impacted
12 customer's preference.

13 The Board stated in the combined proceeding decision
14 that it may become a determining factor where competing
15 offers to the customers are comparable in terms of economic
16 efficiency, system planning, safety and reliability,
17 demonstrably neutral in terms of price impacts on customers
18 of the incumbent and applicable distributor, and where
19 stranding issues are addressed.

20 It should also be noted that with regard to rates, the
21 Board also stated at paragraph 86 of the generic decision
22 that:

23 "The Board does not believe that significant
24 weight should be put on the differences in
25 current distribution rates, even though current
26 rates may be a significant factor in determining
27 customer preference."

28 And this is because insofar as they are not a

1 predictor of future rates, that today's rates may inform
2 customer preference.

3 Now, if I can turn to Staff's application of the
4 criteria to the application at bar, the Board has stated in
5 the past that it does not generally support the fostering
6 of competition in the distribution sector. However, the
7 matter before you features two electricity distributors
8 essentially competing for customers.

9 This is not a simple application. It has been amended
10 more than once since it was first filed in June 2012. It
11 is being vigorously contested by the incumbent utility.
12 The service area that is the subject of the application
13 covers a wide and diverse geographical area. There are
14 multiple landowners, multiple times of landowners affected
15 and potentially affected, a number of whom you have heard
16 from today.

17 In the combined proceeding decision, the Board also
18 stated that it would prefer not to impose a specific
19 solution on parties, but that is precisely the task of the
20 Board in this matter.

21 Board Staff submits, however, that the application of
22 the test, as first set out in the combined proceeding
23 decision, to the five parts of this application should not
24 necessarily be seen to be complex.

25 Some of the parties have -- well, each of the parties
26 has touched upon policy issues that were touched upon in
27 that decision. In fact, in Schools' letter of
28 intervention, it expressed a concern that this matter might

1 be opened -- might open up the generic decision to further
2 review and revision.

3 And it's Staff's submission that in dealing -- and
4 that intervention request was submitted prior to there
5 being notice of the proceeding. It is Staff's submission
6 that the Panel, that you have clearly indicated to the
7 parties that because of the imminent need for connections
8 because of the real customers that have appeared before
9 you, you want to deal with the facts of the matter. And it
10 is Staff's submission that a decision can be made in this
11 matter based on the evidence and the tests laid out before
12 you in prior decisions, and a reopening isn't necessary,
13 for lack of a better word.

14 If I can turn now to Parts I and IV of the
15 application, we know that Horizon is seeking to amend its
16 licence such that it would include two new developments.

17 The new customer impacted by part I is Multi-Area
18 Developments Inc.; it is not the end-use customer. With
19 the consent of Multi-Area, the Board previously granted
20 service area amendments to Horizon in respect of the prior
21 six phases of the Summit Park development.

22 Phase 7 is entirely within Hydro One's service
23 territory, and it is a natural extension of the Summit Park
24 development. And Horizon's evidence is that it would
25 naturally be the service provider for this area.

26 However, Multi-Area has requested that Hydro One
27 provide distribution service.

28 The new customer impacted by part IV is the Hamilton-

1 Wentworth Catholic School Board, and is, in this case, the
2 end-use customer.

3 It should also be noted that Multi-Area also owns a
4 small parcel of this land in this part IV area.

5 Part IV features a new development, the Bishop Ryan
6 Catholic secondary school, and the school is requesting
7 that Horizon provide it with distribution service.

8 These customers have shown an active interest in this
9 proceeding.

10 Hydro One states that it is in the process of
11 constructing a 27.6 kV feeder that will be used to serve
12 customers outside the amendment area - in Binbrook, namely
13 - but given the route that Hydro One has chosen for the
14 line, is capable of serving the proposed and any future
15 developments on these part I and IV lands.

16 At issue between the two utilities is whether or not
17 Hydro One should be including any of the costs of this new
18 27.6 circuit. Hydro One -- sorry, Horizon Utilities has
19 taken one position, that this construction is an expansion,
20 and Hydro One has taken the position that the construction
21 is an enhancement.

22 In Staff's submission, economic efficiency and
23 protection of consumer interests through rational
24 expansion, rational optimization of existing distribution
25 systems, should be a primary principle in assessing the
26 merits of part I and part IV.

27 The Board finds that Hydro One's -- if the Board finds
28 that Hydro One's construction of the 27.6 kV line is part

1 of a planned system enhancement and should not be
2 incremental to the cost comparison between the two
3 utilities for the purpose of this application, then Board
4 Staff submits the costs of connection for both part I and
5 part IV are comparable.

6 And in the circumstances of this application, where
7 there are customers hoping for timely connections and both
8 the applicant and the incumbent utility are well positioned
9 to supply proposed developments, then the Board may also
10 look to customer preference, the rate impact on prospective
11 customers, and other relevant factors.

12 Parts II and III have been described sufficiently thus
13 far today. Service to these customers is currently being
14 provided by Hydro One's 8 kilovolt line.

15 In Board Staff's submission, with respect to the
16 existing customers, they are all within Hydro One's service
17 territory. The Board has stated that service area
18 amendment applications should not be resulting in the
19 Board-mandated transfer of customers.

20 As per the criteria from the combined proceeding, the
21 Board should first assess whether the applicant has
22 sufficiently established it would be the safer, more
23 reliable, and more economically efficient utility to
24 service the area before considering such other factors as
25 customer preference.

26 MS. CONBOY: Thank you, Mr. Lanni.

27 Mr. O'Leary, back to you. I have 15 minutes down here
28 in my schedule that people gave me.

1 MR. O'LEARY: I will do what I can in the 15 minutes,
2 Madam Chair.

3 MS. CONBOY: Thank you.

4 **REPLY ARGUMENT BY MR. O'LEARY:**

5 MR. O'LEARY: Let me just start with a quick response
6 to that of Mr. Malcolmson. He is correct that Horizon
7 Utilities has given those reasonable assurances as he
8 described, but it did not agree to be bound by the offer to
9 connect of Hydro One and to provide materially similar
10 terms, substitute the words "no capital contribution", and
11 Horizon could not do that because it would be contrary to
12 the code.

13 But the fact that he raises it here is an important
14 point and a telling one. It shows that Multi-Area is
15 motivated by the offer to connect and not the other
16 considerations that you should be considering in this
17 proceeding which are set out in the combined proceeding.

18 The fact is it is not an existing customer. It came
19 to Horizon Utilities, asked it to file a service area
20 amendment, which it did on June 15th, which was supported
21 by Multi-Area at the time. It was filed.

22 The offer to connect included a capital contribution,
23 which wasn't executed by Multi-Area, but it did have a
24 capital contribution. It then gets another one from Hydro
25 One which has zero in it - \$20,000, virtually zero - and it
26 signs that.

27 So the situation here is unique. It is not a
28 situation where an existing customer is being asked to be

1 transferred over. The situation is the service area
2 amendment was live, and the customer or the prospective
3 customer then signed the competing offer to connect.

4 In response to Mr. Stephenson, I will deal with that
5 very quickly. Mr. Stephenson produced a copy of a portion
6 of the conditions of service of Hydro One. I included the
7 portion that would be relevant that he should have gone to,
8 first of all, with all due respect, and that is at
9 paragraph -- at tab 17 of our compendium of authorities.

10 And this is the definition of a building that lies
11 along. So this is Hydro One's own conditions of service.
12 It says -- so everything that he read you has to be subject
13 to this definition.

14 It means:

15 "... customer, property or parcel of land that is
16 directly adjacent to or abuts on to the public
17 road allowance where Hydro One has Hydro One
18 facilities and equipment of the appropriate
19 voltage and capacity."

20 It doesn't have the appropriate voltage in front of
21 the school. It has got to build the new circuit. So by
22 their own definition today, they do not meet the definition
23 of a building that lies along.

24 Madam Chair, as has obviously has become self-evident
25 in this matter, it is not a typical run-of-the-mill service
26 area amendment application. It is unique because of its
27 history and we submit that those are relevant
28 considerations and they go to planning considerations.

1 And you, Madam Chair, we think asked a very relevant
2 question, and that is: Given the fact that Hydro One's
3 service territory is everything that isn't the urban LDCs,
4 how does that have an influence or an impact, if I
5 interpret your question correctly, on the planning within
6 those urban areas?

7 Well, first of all, the response to that should be:
8 Of course the urban areas must be planning for the eventual
9 expansion of these areas; otherwise they would not be
10 following good utility practice.

11 They must be doing that, and the combined proceeding,
12 in fact, contemplates that the urban areas will be
13 expanding, perhaps at the loss of Hydro One territory, but
14 the urban areas will more likely be the more efficient
15 means of servicing these areas.

16 So to suggest, as I understand Hydro One is saying,
17 that this shouldn't happen would just be a bad utility
18 practice.

19 But Mr. Engelberg's comments, back to your question,
20 were that the current boundaries are clear borders and
21 clearly defined. And the only way I can interpret that
22 response is that they are saying there should be no change
23 in the service areas, that the combined proceeding was
24 wrong and that Hydro One has the clear boundaries; there is
25 nothing that needs to be done.

26 And our submission is that is simply not consistent
27 with the combined proceeding. And, in fact, Hydro One is
28 trying to reopen, as Mr. Lanni would say, or relitigate, as

1 I would say, the combined proceeding, particularly in the
2 areas of economic efficiency and the long list of the
3 stranded assets, the customer information systems, all of
4 the things upstream that it raised during the combined
5 proceeding which it is saying that should now be considered
6 by you as a loss to it.

7 Mr. Engelberg did correctly raise that the onus is on
8 the applicant here, and we acknowledge that. Mr. Engelberg
9 -- and I waited to hear for his explanation of how Hydro
10 One satisfied the obligations upon it. And at paragraph
11 200 of the combined proceeding, in the paragraph that
12 immediately follows the one that says, "the onus is on the
13 applicant, thus Horizon", it states:

14 "At the same time, the Board expects incumbent
15 distributors to give proper consideration to
16 rational and efficient service area realignment,
17 even where it results in the loss of some
18 territory. Amendments should not be resisted
19 where the proponent is clearly the more efficient
20 service provider for the affected customer. The
21 distributors affected..."

22 That is plural. "The distributors affected", so that
23 is both:

24 "...by a proposed amendment should evaluate a
25 proposal in light of the principles in this
26 decision..."

27 So let's stop there. I attempted to walk you through,
28 quickly, all of the criteria, and particularly important

1 economic efficiency criteria that are set out in the
2 combined proceeding. Mr. Engelberg did not do that. In
3 fact, there was no mention in respect to a number of those
4 criteria. I went to five of them, and there are some he
5 didn't address at all.

6 But going on, these are on the filing requirements,
7 just to make it a little clearer the obligations. The
8 Board said, paragraph 317, that in the service area
9 amendment there's supposed to be copies of the offers -
10 again, plural, so we could only do one - so there is one
11 required of Hydro One:

12 "Copies of the offer(s) to connect, and
13 associated financial evaluations in accordance
14 with Appendix B of the Distribution System Code."

15 So we don't have one in respect to the school, so
16 Hydro One has not complied.

17 "The financial evaluations should indicate costs
18 associated with the connection including on-site
19 capital, capital required to extend the
20 distribution system to the customer location,
21 incremental up-stream capital investment required
22 to serve the load, the present value of
23 incremental OM&A costs and incremental taxes, as
24 well as the expected incremental revenue, the
25 amount of revenue shortfall..."

26 So it is clear that the Board was expecting that, and
27 I didn't hear from Mr. Engelberg his explanation as to why
28 it didn't happen.

1 It also goes on at 318 to say:

2 "Detailed comparison of the new or upgraded
3 electrical infrastructure necessary for each
4 distributor to serve the proposed connection and
5 load."

6 That's the obligation on both of us in a contested
7 application. We asked for the details of that. You may
8 recall I took you to the several IRs that we asked,
9 including a complete breakdown of the things that come out
10 of the filing requirements, and Hydro One said no.

11 My friend has indicated that the Burman report is not
12 independent. Well, Mr. Burman used to be the chief
13 engineer at Hydro One. He certainly has the expertise and
14 capability to go out and look at the factual evidence which
15 exists, and, indeed, Hydro One -- Mr. Engelberg did not go
16 to Mr. Burman to any great extent at all.

17 So his findings are unchallenged. His factual
18 determination is not questionable. And as Mr. Shepherd
19 said, as a matter of law, there is no evidence which
20 contradicts what Mr. Burman said.

21 And we therefore submit that his report alone stands
22 for the proposition that the applicant has met its onus in
23 this proceeding, and that's why that gentleman was
24 retained.

25 But let me add to that the fact that Hydro One had it
26 many months ago. They could have produced another expert
27 that would have gone out and said, Oh, no, that's wrong.
28 That's wrong. You've made the wrong observations,

1 incorrect.

2 That didn't happen. In fact, their witnesses didn't
3 even do that. So it is not only not challenged. There is
4 no evidence that was adduced which would oppose it in
5 writing.

6 My friend talked about the difference in the language
7 of the Distribution System Code between expansion and
8 enhancement. And you may recall that I specifically took
9 the panel to the definition at 3.2.30 and asked them if
10 they're building a new line. Yes. And is it going to
11 connect the customer? And I ask you to look at the
12 definition, but they agreed that it is doing those things.

13 In fact, in four of the different sub-parts of the
14 definition of "expansion", they are doing precisely what
15 that language is, but as I have said earlier, in our
16 respectful submission, they're trying to cloak it in terms
17 of an enhancement.

18 Well, should you decide that you don't want to get
19 into that debate about whether an expansion or enhancement
20 is necessary, there is an alternative to you.

21 And that is, that you can -- they may call it
22 enhancement. We call it expansion. Frankly, you can call
23 it Swiss cheese.

24 Under the combined proceeding, the importance are:
25 Are there costs which should have been allocated to the
26 parts of the service area amendment application? Are there
27 costs which you should be considering for the purposes of
28 determining which of the competing utilities is in a better

1 position to serve the service area amendments?

2 And you are not bound by any description of it as
3 being enhancement or expansion.

4 Our concern, in part, is the fact that it does set a
5 precedent if it is allowed to be cloaked in enhancement
6 terms, and then it will be used to, as Mr. Stoll indicated,
7 perhaps ring-fence all of the urban utilities in the
8 province.

9 It is also our concern that if that is used as a means
10 of avoiding asking a customer for a proper capital
11 contribution, then you are not going to have a fair
12 comparison by the customers, by the developers. They're
13 going to get one offer to connect, which we say is not
14 compliant and there is no capital contribution, and then
15 the urban LDC is going to apply the rules and there is a
16 capital contribution.

17 And, common sense, what's the developer going to do?
18 Of course they're going to sign for the -- with the utility
19 that doesn't ask for the 300,000 in capital contribution.

20 My friend talked about efficient planning and all of
21 the years that Hydro One has been planning. First of all,
22 he talked about the fact that certain poles on Highway 56
23 were re-framed in the 1970s. Well, at that time, Hydro One
24 was proposing to build everything at 27.6, but is he really
25 suggesting that the Binbrook loop was contemplated in the
26 1970s? That isn't what he's suggesting, surely.

27 But you do have the ability to weigh and assess the
28 credibility of the evidence that's been presented. And our

1 submission is that, based upon the lack of real planning
2 evidence that was filed here -- if you think that the issue
3 of enhancement is an important one -- and we're saying you
4 don't even need to go there, you should look at these costs
5 regardless -- but if you think you do need to go there, you
6 do have the ability and we submit that you should look at
7 the credibility of what Hydro One is suggesting.

8 There is no notice to the developer saying: Hey,
9 we're building this new line down Rymal Road. Nothing.
10 Nothing's been produced in evidence to that regard.

11 You would think that if they are in a position and
12 really believed that they were going to be able to supply
13 power when they first got notice from Multi-Area that they
14 wanted the connection or at any point up until they
15 actually did the offer to connect, they would have done
16 something and it would be here in evidence, saying: Hey,
17 we were planning on it.

18 Instead, there is nothing.

19 The plans, I took them to you. The most current is
20 the September 2012 preliminary design, which changed the
21 connection point. Hydro One was asked for evidence that
22 they actually planned this enhancement earlier. They did
23 not produce it.

24 You as a Panel, as a matter of law, have the ability
25 to draw an adverse inference by the fact that Hydro One has
26 not produced any documentation to support this alleged
27 planning of the Binbrook loop.

28 They admitted that the two documents they filed were

1 created in December 2012. These are six months after
2 Horizon's service area amendment application was filed.

3 There are no planning documents. And we ask for the
4 release level to say that this \$2.8 million Binbrook loop
5 is needed, or that it was approved at higher levels of
6 Hydro One; it was not produced, even when it is part of an
7 undertaking in the presence of yourself.

8 So our submission, Madam Chair, is that an adverse
9 inference can be drawn, and that there is no credibility to
10 what they're claiming.

11 But Mr. Burman said it -- two minutes? Mr. Burman
12 said it both in cross-examination and in his report.

13 First of all, that the line along Rymal Road makes no
14 sense, because you don't go north and then east to provide
15 a community that is, you know, five, six, seven miles or
16 kilometres to the south.

17 They've gone out of their way, he said, exclusively -
18 and I am paraphrasing this - they have gone out of their
19 way to provide the connection to the service area amendment
20 lands. For that reason, clearly, those costs should be
21 included.

22 But they're planning evidence also does not include
23 any real consideration of cheaper alternatives for the
24 Binbrook loop.

25 And I took the witnesses to that at page 59 of the
26 transcripts. Mr. Zerdin admitted that he could have looked
27 at other routes, but they didn't. I am paraphrasing, but
28 if you go back and look at it, I suggested two alternatives

1 to him. He said, and I quote, "This route could have been
2 evaluated".

3 He did not say they did, and he wasn't trying to
4 suggest that they did, because they didn't. The appendix B
5 planning document shows two routes, the one they chose and
6 another route, and no description or real evidence to show
7 why.

8 So in conclusion -- which I am sure you are very happy
9 to hear that word, Madam Chair --

10 MS. CONBOY: Otherwise I am going to cut you off
11 anyway, so keep going.

12 [Laughter]

13 MR. O'LEARY: We submit that there are important
14 decisions that have to be made in this proceeding, and
15 primarily it is critical that utilities across the province
16 understand that the rules set out in the combined
17 proceeding will continue to apply, and that they won't be
18 attacked and skirted around by using the enhancement cloak.

19 These are -- to Mr. Malcolmson's point, it is
20 important that there be some certainty in the province
21 about how these service area amendments should proceed in
22 the future.

23 Horizon Utilities has attempted, in every way, to
24 comply with those rules and to meet the onus, and we
25 certainly hope that you will concur with that and grant the
26 approval.

27 MS. CONBOY: Thank you very much.

28 MR. O'LEARY: My only last comment is to thank the

1 Panel for your time and commitment, and we appreciate, on
2 behalf of all of the counsel here, your hard work.

3 MS. CONBOY: Thank you very much. We will extend for
4 a bit of that.

5 [Laughter]

6 MS. CONBOY: So that completes the oral portion of our
7 proceeding. Thank you very much. I know it was very
8 difficult today to sort of stick to those, stick to those
9 timelines, and we will see how well that works.

10 And Mr. Engelberg, we will receive your written
11 comments by the end of the day?

12 MR. ENGELBERG: Yes.

13 MS. CONBOY: Is that correct?

14 MR. ENGELBERG: Yes, you will.

15 MS. CONBOY: We will also get a decision out as
16 quickly as possible. Thank you very much.

17 --- Whereupon the hearing concluded at 12:30 p.m.

18

19

20

21

22

23

24

25

26

27

28