

# ONTARIO

## ENERGY

BOARD

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| **FILE NO.:** | EB‑2013-0053 |  |
| **VOLUME:**  **DATE:**  **BEFORE:** | **Motion Hearing**  **June 18, 2013**  **Paula Conboy**  **Emad Elsayed** | **Presiding Member**  **Member** |

**EB-2013-0053**

#### THE ONTARIO ENERGY BOARD

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

**AND IN THE MATTER OF** an application by Hydro One Networks Inc. for an order or orders pursuant to section 92 of the Ontario Energy Board Act, 1998 for Leave to Construct upgraded electricity Transmission Line Facilities in the Kitchener-Waterloo-Cambridge-Guelph area.

Hearing held at 2300 Yonge Street,

25th Floor, Toronto, Ontario,

on Tuesday, June 18th, 2013,

commencing at 9:30 a.m.

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MOTION HEARING

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BEFORE:

PAULA CONBOY Presiding Member

EMAD ELSAYED Member

MICHAEL MILLAR Board Counsel

DAVID RICHMOND Board Staff

NABIH MIKHAIL

RHONDA WISE Hydro One Networks Inc.

KENT ELSON Environmental Defence

GLENN ZACHER Ontario Power Authority (OPA)

CHARLENE De BOER

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[EXHIBIT NO. KM1.2: OPA KWCG REPORT. 15](#_Toc359326069)

NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING

Tuesday, June 18, 2013

--- On commencing at 9:30 a.m.

MS. CONBOY: The Board is sitting today in a matter of an application by Hydro One Networks Inc. for an order or orders pursuant to section 92 of the Ontario Energy Board Act for leave to construct upgraded electricity transmission line facilities in the Kitchener-Waterloo-Cambridge-Guelph area. The Board has assigned EB-2013-0053 to this application.

The motion filed on May 31st, 2013 is seeking an order of the Board requiring Hydro One to provide more complete responses with respect to certain interrogatories.

My name is Paula Conboy and I will be presiding over today's proceedings. And with me today is Board member Dr. Emad Elsayed. May I have appearances, please?

MS. WISE: I'm Rhonda Wise, counsel for Hydro One.

MS. CONBOY: Good morning, Ms. Wise.

MR. ZACHER: Good morning, Madam Chair and Dr. Elsayed. My name is Glenn Zacher and I am appearing on behalf of the Ontario Power Authority. With me is Charlene de Boer, who is the OPA's manager of regulatory proceedings.

MS. CONBOY: Good morning.

MR. ELSON: Good morning. My name is Kent Elson, and I am here on behalf of Environmental Defence.

MS. CONBOY: Good morning, Mr. Elson.

MR. MILLAR: Good morning, Panel. Michael Millar, counsel for Board Staff. I'm joined by David Richmond and Nabih Mikhail.

MS. CONBOY: Thank you very much. Are there any preliminary matters?

Now, I understand that, Mr. Zacher, you would like to make presentations today?

Preliminary Matters:

MR. ZACHER: The OPA, of course, is not the applicant. It's supporting the application, and most of the interrogatories for which my friend requests further and better information have to do with information that's in the hands of the OPA.

So I think we've agreed that Ms. Wise will go first as the applicant after Mr. Elson has made his submissions, and she will deal with one or two discrete interrogatories that are directed at Hydro One, and then I would address the balance, if that's acceptable.

MS. CONBOY: Sounds good. Mr. Elson, would you like to begin?

Submissions by Mr. Elson:

MR. ELSON: Yes, thank you. I would like to start and I believe it would be helpful if I were to start by briefly outlining Environmental Defence's position in this proceeding, because that is the underlying foundation for why we believe these documents are or are not relevant.

MS. CONBOY: Thank you.

MR. ELSON: In essence, Environmental Defence's position is that Hydro One has not adequately assessed or established on the evidence whether this project is more cost-effective as compared to the alternatives or an alternative of a combination of DG and CDM; that is, distributed generation and conservation and demand management.

It appears to Environmental Defence that CDM and DG are in fact a feasible alternative and that they are potentially a much better alternative from the perspective of cost reliability, as well as implementation time. I will address those points very briefly as a foundation for further discussion.

First, starting with feasibility, it appears to Environmental Defence that there is a feasible alternative that would be a combination of DG and CDM.

I'll start first with the issue of CDM and I'll ask that you refer to tab 44 of ED's compendium, which I believe you have in front of you.

MS. CONBOY: We do. Now, I understand there is no new material in here.

MR. ELSON: That's correct.

MS. CONBOY: But perhaps we should assign it an exhibit number for our references.

MR. MILLAR: We'll call this Exhibit KM1.1 I guess it's the full motion record for Environmental Defence's motion.

EXHIBIT NO. KM1.1: MOTION RECORD FOR ENVIRONMENTAL DEFENCE'S MOTION.

MS. CONBOY: Thank you, Mr. Millar. Forty-four, you said?

MR. ELSON: Yes. So I've numbered the tabs in accordance with the interrogatory responses, so this is also IR 44. This is the response where Hydro One indicates why it believes that CDM is not a feasible alternative, and at page 2 of the response, which is page 54 of the motion record, Hydro One indicates that the anticipated CDM levels were derived simply by allocating OPA's conservation targets to the Kitchener-Waterloo-Cambridge area, which I'll refer to as the KWCG area.

One of the issues we have with what Hydro One has done is that they haven't gone beyond this. So the extent of their examination of CDM is simply to do a calculation, which is an allocation of the OPA's conservation targets. They haven't expressly calculated the CDM potential in this area to see if it would be sufficient to offset the demand growth that is driving this project.

And, in fact, in Interrogatory No. 18, which is in here, but I don't need to turn you to, the OPA expressly indicates that it has not examined the potential for incremental cost-effective CDM beyond the amounts set out in the targets.

So they haven't looked to see if there could be one or two times the amount that is assumed in the targets, and it may be that the actual potential is much higher than is set out in the provincial targets.

Furthermore, on the topic of CDM, and perhaps more fundamentally, it appears that the OPA looked at CDM and DG in isolation rather than examine them as a combined alternative consisting of a combination of both potential cost-effective CDM and DG. So you can see that from page 1 in the response to IR 44:

"Hydro One concludes that the amount of additional conservation that would be required to fully address the KWCG areas near-term and medium-term capacity needs is significant compared to the amount of planned conservation."

So our problem is that even if CDM alone may be insufficient, that does not mean a combination of CDM and DG could not be an alternative to this project.

So moving on to DG, in particular, in our submission there is no dispute whether DG is a technically feasible alternative, and I would ask you to turn to tab 26. The primary disputed issue with respect to DG is cost-effectiveness, which I will return to shortly. But, again, with respect to pure technical feasibility, Hydro One admits it is technically feasible. Again that appears at tab 26. Hydro One says:

"While additional distribution is technically capable of meeting the supply capacity in the KWCG area..."

They do admit it is technically feasible. The issue is cost-effectiveness.

With respect to feasibility, the OPA also states that DG projects are uncertain. That's the word they use. However, there are approximately 60 megawatts of DG projects that have been submitted to the OPA for contracts in the Guelph area, and that's in IRs 21 and 22.

In our submission, the OPA can hardly hold out uncertainty as the reason DG not being feasible, when all that needs to happen is for the OPA to grant approvals to just some of these projects that are already in the pipe and have been in the pipe for a long time.

Now, I won't go into this any further, except to say, in our submission, CDM and DG is feasible and there are many more details we will discuss in final argument. Moving on to our second point --

MS. CONBOY: When you say you are going to deal with them in final argument, you mean final argument today --

MR. ELSON: No, no, of course not.

MS. CONBOY: -- or final argument with respect to the entire proceeding?

MR. ELSON: I'm trying to provide a high-level overview of what our argument is for the sake of relevance, without getting into the details, and I'm leaving out some points here.

MS. CONBOY: Thank you.

MR. ELSON: Moving on to our second main point, it appears that CDM and DG are potentially more cost-effective than the proposed project, which I believe is the core of what this proceeding is looking at, is a comparison of cost-effectiveness of alternatives.

Starting again with CDM, at no point does Hydro One or the OPA refute in its evidence that CDM is cost-effective. The issue, as we just discussed, is whether CDM is a feasible alternative. CDM programs often have a positive benefit-cost ratio due to the savings from the power usage that results from the conservation. So in some cases the net cost is actually zero, where they actually provide a net benefit to consumers. So from the perspective of cost-effectiveness, CDM can be the most cost-effective alternative.

The real issue with respect to cost-effectiveness, it appears from Hydro One's materials, is distributed generation.

So the OPA's primary criticism of DG is that it claims that it is too expensive. So its analysis on this point is found in IR 26. However -- I won't take you through all the numbers here. However, it's our position that this analysis is highly flawed in IR 26, because it fails to take into account the fact that combined heat and power, which is the most cost-effective form of distributed generation, can avoid both the operating and the capital costs of new base load generation capacity. And those capital costs of base load generation capacity were not accounted for in the cost-benefit analysis that appears at IR 26.

Environmental Defence has run those numbers, and if those avoided costs are factored into the cost-benefit comparison, DG is more cost-effective than the alternative of new transmission plus new outside base load generation. Specifically implementing required 190 megawatts of DG is over $200 million less expensive than the alternative of the new transmission line plus, for example, 190 megawatts of nuclear base load generation.

This will be addressed in detail later, of course. I'm just providing a high-level overview.

So for those general reasons it appears to us that CDM and DG are very potentially lesser cost options.

Moving on to the third point, it appears that this combination of CDM and DG will also provide significantly more reliability to Hydro One's customers as compared to the proposed project.

And I'd ask that you refer to tab 23, which is the response to Interrogatory 23. In this interrogatory response, Hydro One acknowledges that, quote:

"It is possible for distributed generation in the KWCG area to increase the region's security of supply in the event of a provincial blackout or failure of the Hydro One grid."

So this is the core of the issue. The proposed transmission upgrade increases reliability only in relation to local transmission problems, whereas DG increases reliability in relation to local transmission problems, but also in relation to a provincial blackout or in relation to wider transmission problems such as what might occur from a large storm or hurricane.

So distributed generation provides more reliability because, in essence, it is providing the power from inside the city itself.

Moving on to the fourth point, again at a very high level, it appears that a combination of CDM and DG could also potentially be brought online as soon or even sooner than the proposed project. Based on the latest reports from the IESO, our understanding is that the expected completion date of this project is the second quarter of 2016, which is three years from now. It's hard for us to understand why CDM and DG couldn't be ramped up to the required level by that time and in a staged process, so some projects can be brought online sooner than others and the need could start to be addressed not in one shot but as quickly as projects could be brought online.

Environmental Defence has some serious concerns with potential over-counting with respect to the load forecast provided in this proceeding. There is a lot of detail that I will not go into here, but I will point out two of what are many factors we are concerned about.

The first is that in 2008 the OPA relied on the KWCG area's LDCs' forecasts in order to estimate that peak demand in 2012 would be about 1,700 megawatts. So this was the OPA relying on the LDCs' forecasts. This turned out to be a gross overestimate. The actual peak demand in 2012 in the KWCG area turned out to be about 1,400 megawatts or 18 percent below the estimated figure.

Hydro One is, again, in this proceeding basing its forecasts on the figures provided by the LDCs, and we are concerned that this forecast is again over-counting, as occurred in the past.

Secondly, it also appears the LDCs' forecasts are based on somewhat arbitrarily selected historical time periods that go far back in time and are not representative of recent trends in electricity demands. Some of these time periods stretch back as far as 1978; they're different based on which LDC is providing the forecast.

More recent data, we submit, suggests a much lower rate of growth or even declines due to changes in our economy over the last five to 10 years. The OPA is predicting an annual 1.7 percent growth rate in the KWCG area, even though electricity consumption has actually dropped in the area since 2005.

Finally, I would like to address one final point about Environmental Defence's case which relates not to specific facts but to the Board's regulatory framework and who has the burden here.

In our submission, Environmental Defence does not have the burden of establishing in this proceeding that the Board should choose CDM and DG as a preferred alternative. We are not going to be asking that the Board at the end of this hearing reject this project and instead accept some combination of DG and CDM. In order for another alternative to be developed, that would of course have to be done by Hydro One and the OPA, and we don't presume to be able to provide all those details.

Instead, in our submission, we simply must show that Hydro One has not provided sufficient evidence to support its conclusion that its project is needed and that its project is the preferred alternative. In our submission, it is the project proponent, not the intervenor, that bears the responsibility of establishing that its project is the preferred alternative.

This is clear from the filing requirements for these applications, which are excerpted in our motion record at tab B. I would like to refer briefly to some of these before addressing each IR in turn.

So at tab B of our motion record, which, again, is Exhibit KM1.1, these are the filing requirements for electricity transmission and distribution applications, and in particular starting at page 11 of the motion record is chapter 4, which relates to these kinds of section 92 projects.

At page 8 of chapter 4, which is page 15 of the motion record, the filing guidelines say, quote:

"The responsibility for the provision of all evidence for the entire case rests with the applicant."

So, again, clearly the applicant has the burden. And if you can see in our motion record, I've underlined the relevant portions.

Flipping over to page 10 of chapter 4 of the filing guidelines, which is page 17 of our motion record, the guidelines state as follows -- sorry, I shouldn't say the guidelines. The filing requirements state as follows:

"The reasons that a project is necessary must be identified. The basic form for such evidence should be cost-benefit analyses, if applicable, of various options. The Board expects that applicants will present..."

The first bullet:

"The preferred option, i.e., the proposed project; and..."

The second bullet:

"Alternative options."

Clearly the applicant is required to do a cost-benefit analysis vis-à-vis alternatives, and this is what we are challenging in this proceeding, whether this cost-benefit analysis has been conducted adequately.

Moving on on page 10, the requirements state that:

"...the Board will either approve or not approve the proposed project (i.e., the preferred option). It will not choose a solution from among the alternative options."

And, again, we are not asking -- Environmental Defence is not asking that the Board approve the alternative of CDM and DG or conclusively decide that those opposites are preferable. That's not what the filing requirements contemplate, in our submission. Instead, we are asking that the application simply not be approved on the grounds that the applicant hasn't sufficiently assessed the alternatives or provided evidence to conclusively establish that its proposed alternative is in fact superior.

So based on these filing requirements, the focus is on what the applicant has done, its assessment of the alternatives and its evidence about the assessment of the alternatives. And this will come up as I discuss the interrogatories in turn.

I would actually like to turn to each individual interrogatory, but perhaps I could ask the Board Panel if you have any questions about the general outline of our case.

DR. ELSAYED: I don't have any questions.

MS. CONBOY: No, I think that was quite clear. Thank you.

MR. ELSON: Thank you. So turning first to Interrogatory No. 1, it actually turns out -- and, actually, maybe one way to do this efficiently is go through our letter of May 21, 2013, which appears at tab A of our motion record.

So the first interrogatory we were seeking better responses to was Interrogatory No. 1, which was just an indication whether the numbers provided were coincident or non-coincident peaks. I've spoken to our consultants, and it appears that now that we have the unlocked hourly data from Hydro One in relation to another interrogatory, we have what we need, so I'll move on. So we don't need to address Interrogatory No. 1 further.

Interrogatory No. 2 requested information in relation to the ORTAC criteria. I'll read from that IR. We requested that Hydro One indicate approximately when the OPA and Hydro One were first aware of the need to take steps to ensure compliance with the ORTAC criteria described in section 5 of the OPA's KWCG report.

You can turn to tab 5 of our motion record, which shows the response. The response from Hydro One indicates that the OPA and Hydro One began to assess the needs and options for this area in 2007 as part of the IPSP. However, as you can see from the interrogatory response and the underlying portions at tab 5 of our motion record, Hydro One does not indicate when they were first aware of the problem.

It appears to us they could have been first aware of the problem much earlier in time, and that appears to be the case from our review of the evidence. We just don't know the exact time when they were first aware and when they first forecast this problem was going to arise.

To truly answer when they were first aware of the problem, we believe they would need to indicate in the very least when they first forecast that the ORTAC criteria would not be met, and when they first failed to meet it.

It appears to us that Hydro One was potentially out of compliance with the ORTAC criteria significantly prior to 2007, which is the date listed in this interrogatory response, and should have presumably forecast this much sooner.

Perhaps I could refer you to the compendium of Hydro One. Included in that compendium is the OPA report, and that OPA report, I believe, is at tab 11 of Hydro One's compendium. And I'll give a brief overview of what the ORTAC criteria is just as a basis for what we're talking about here.

I'm hoping to refer to you tab 11 of the Hydro One compendium, which is the OPA KWCG report, and specifically to page 11 of that report.

MS. CONBOY: Why don't we give that an exhibit number now while we're referring to it, Mr. Millar?

MR. MILLAR: KM1.2.

EXHIBIT NO. KM1.2: OPA KWCG REPORT.

MS. CONBOY: Thank you.

MR. ELSON: So as you can see here, there are two drivers of this project that are related to the IESO's Ontario Resource and Transmission Assessment Criteria, which is ORTAC. One of those drivers or one of the criteria is supply capacity. The other criteria is minimizing the impact of supply interruptions. And with respect to the second criteria, which is minimizing impact of supply interruptions, the criteria is that all load loss in excess of 250 megawatts must be restored within half an hour. All load loss in excess of 150 megawatts must be restored within four hours. Finally, all load lost in the area must be restored within eight hours.

On page 12 of the OPA report, the OPA concludes that:

"Based on the application of the ORTAC criteria, three of the four sources of supply to the KWCG area have reached or are close to reaching their load meeting capability."

That's the first category of the ORTAC criteria. The report goes on and says:

"Additionally a number of the subsystems are not meeting the service interruption criteria."

Which, again, is the second set of ORTAC criteria. So an example would be Waterloo-Guelph, which at page 14 of the OPA report there is a conclusion that the existing system lacks the capability to restore power to these customers in accordance with the ORTAC criteria.

However, it's our understanding that Waterloo-Guelph has had over 250 megawatts of load for a long time. And, again, this relates to a criteria that a load of over 250 megawatts must be restored within 30 minutes.

If you refer to Interrogatory Response No. 1, we don't need to turn it up, but Waterloo-Guelph has had over 250 megawatts since prior to 2004. I don't know when they crossed that 250 megawatt mark. I also don't know when in specific that criteria was not met, but it seems that that time was prior to 2007, and all we're asking for is an indication of when it first wasn't met and also an indication of when the OPA and Hydro One forecast this problem would arise.

This is relevant for a number of reasons. First of all, just intuitively I imagine the Board would like to know when the problem first arose that this project is meant to be addressing, just on an intuitive level, but there are also other ways in which this issue is relevant.

In particular, we submit it's actually relevant to whether distributed generation and CDM are potential alternatives to the project. Hydro One says that DG and CDM are not alternatives in part due to "the immediate nature" of the needs. It's those words, "immediate nature," that I'm referring to.

Those appear in Interrogatory Responses 26 and 44. I don't need to turn them up, but in essence Hydro One seems to be saying that DG and CDM can't be implemented because there's not enough time.

So in our submission the timing of when this need first arose and the urgency or immediacy of this need are highly relevant.

So first of all, if Hydro One and the OPA have known about this potential need related to the ORTAC criteria for an extended period of time -- for, say, five or even 10 years -- without addressing it, that would indicate to us that the need is not as immediate or as urgent as they seem to say it is.

Secondly, in addition, the response to this interrogatory may indicate that Hydro One and/or the OPA should have been analyzing CDM and DG as alternatives far earlier in time. It may be that Hydro One is saying it's too late now, when in fact they knew of this problem five or 10 years ago, and Environmental Defence would argue they should have taken steps before this time.

If that's the case, Environmental Defence will seek directions or an order from the Board to address that failure to assess alternatives in an adequate and timely manner.

For example, the Board may simply wish to indicate to Hydro One or the OPA that they should be assessing CDM and DG as alternatives early enough in the planning process to provide time to implement those alternatives where it is in the public interest to do so.

Now, there is a disputed issue here about how long it's going to take to get CDM and DG online, but if the position of Hydro One is that it's going to take too long, then in our submission they should be looking at these potentially cheaper and more reliable alternatives earlier.

So for those reasons we're requesting a more complete answer to Interrogatory 5(a), and if I were asked to narrow the question even further, it would be to find out when the ORTAC criteria, the two kinds of ORTAC criteria, were first breached, and even further back in time when it was forecast that that ORTAC criteria was going to be breached.

Moving on to Interrogatory 10(c) and (d), this interrogatory requested an estimate of the potential Peaksaver and Peaksaver Plus participants, and the total demand reduction that would result from the total potential participants. Hydro One simply didn't provide a response; in its interrogatory response, it says:

"The OPA does not have an estimate of the cumulative total number of potential Peaksaver and Peaksaver Plus participants for the KWCG area."

However, in our submission that's not a full and adequate answer, and we would request that an estimate be provided, that reasonable assumptions be used. This is the kind of information that's within Hydro One and the OPA's control, and not within Environmental Defence's control.

And I'll refer you specifically to tab C of the motion record, which includes the Energy Board rules relating to interrogatories, and particularly page 23 of these rules, which by chance is also page 23 of the motion record. It says:

"A party who it unable or unwilling to provide a full and adequate response to an interrogatory shall file and serve a response, and where the party contends that the information cannot be provided within reasonable effort, setting out the reasons for the unavailability of such information, as well as any alternative available information in support of the response, or that they would provide a response otherwise explaining why such a response cannot be given."

Hydro One hasn't indicated why it can't estimate the potential Peaksaver and Peaksaver Plus participants. We'd submit that they should make an effort, best efforts to do so.

In our letter, we have outlined some alternative information that Hydro One or the OPA could potentially provide which would help us come up with an estimate, but I don't see any reason why the OPA and Hydro One can't do that themselves, so perhaps I will leave that to my friends and respond to whatever further comments they might have on that point.

Before moving on, I'll just add, you know, it may be obvious, but the relevance of the Peaksaver and Peaksaver Plus potential is that that could be part of the combined alternative of CDM and DG, and the higher that potential is, the more likely that CDM and DG can be an alternative to the project in question.

I would like to move on to Interrogatory No. 22. This interrogatory relates to a number of actual local generation projects -- i.e., DG projects -- that have been submitted to the OPA in the City of Guelph. And again, this transmission line is mainly meant to address capacity needs in the City of Guelph, and these applications have been submitted under the FIT and the CHP SOP programs.

These projects would have a total generation capacity of approximately 60 megawatts. They are outlined, I believe, in Interrogatory Responses 21 and 22 -- actually, I believe that's 22 and 23, but I don't think we need to flip that up.

The question also relates to a table, table 3 in Hydro One's evidence. And that is the table that provides, for each subsystem, a forecast of load demand that is net of conservation and DG. In other words, that is the table that is the basis for the driver of this project. That table I've actually excerpted at tab 22, page 40 of the motion record.

Environmental Defence is asking that Hydro One or the OPA provide an updated version of table 3 which assumes that those 60 megawatts of projects have been implemented. Again, this is the table which indicates the demand forecast, which is the driver for this project. And we would very precisely ask that this table be undated under the assumption that those projects are put into place. The specific wording of the interrogatory, of course, being listed at tab 22.

The requested information was not provided on the grounds that, and I quote from the response:

"Connection points for the projects referred to in the City of Guelph Council report are required in order to provide a revised version of table 3, because the proposed projects could be located within the City of Guelph but not electrically connected to the south central Guelph or Kitchener Guelph subsystems."

However, in our submission these 60 megawatts of projects have submitted applications to the OPA and therefore the connection points should be known. These are actual proposed projects with specific sites. The connection points should be known, or some assumptions might be needed in the case of one or two of the projects, but we don't see this as being a reason why an updated version of table 3 can't be provided.

So, again, we believe the connection points are or should be known, and in some cases where it may be -- and I'm just guessing here -- it may be that one project might be somewhat indeterminate, or two projects or five projects, that an assumption be made in the response to say that these projects, it is assumed, became part of this subsystem as opposed to another subsystem.

Again, we submit this information is highly relevant because, again, the main driver for the proposed transmission line is growth in peak demand in the area served by south central Guelph.

The demand fore -- we're simply asking the demand forecast be revised to indicate the potential impact of these specific projects that have already submitted applications to the OPA.

Moving on to Interrogatory No. 26, the wording of the interrogatory appears at our motion record, but, in essence, what we had asked for was a description of the steps taken by Hydro One and the OPA to assess CDM and DG as alternatives.

We had asked for a listing of the dates that those steps occurred, as well as the dates various important memos and reports were authored. And we asked also for a copy of the underlying memos and reports relating to the OPA's and Hydro One's assessment of alternatives.

It turns out that only the OPA has assessed alternatives. Hydro One didn't provide any answers which we are satisfied with. We were only looking for further documentation from the Ontario Power Authority.

The interrogatory response provided only a partial synopsis of the OPA's analysis of CDM and DG. The response didn't provide a list of the steps that were taken to investigate those alternatives. It didn't provide the relevant dates when this assessment started, when major conclusions were reached or when major reports were authored, and the OPA did not provide the underlying documentation, the reports, the key memos. And we ask that this information be provided.

I'll discuss each part of this interrogatory and why, in our submission, we believe it is relevant and proportional and not unduly onerous. First, with respect to the list of steps and dates, again, as I had discussed earlier, the focus of our case is whether a sufficient assessment of the alternatives has been undertaken by the OPA.

A list of these steps, including the key dates, is not an onerous thing to produce. It could potentially be one page. It could be three sentences. I don't know what steps were actually taken, and we're simply asking: What did the OPA do? Can you explain to us in some detail that has dates and specifics?

The dates, in particular, are also relevant because, as I discussed before, Hydro One seems to be saying, in effect, that it is too late to implement CDM and DG as alternatives.

So for the reasons I discussed before, determining when they first started this assessment process is relevant to whether they have adequately assessed them and is relevant to Environmental Defence's potential request, depending on the response to this interrogatory, that the Board issue orders or directions to address a potential failure to assess alternatives in a timely manner.

In relation to documentation underlying the DG and the CDM analysis, we would simply ask for the key documentation, such as reports and the memos underlying this analysis, because this would be presumably contain additional relevant details relating to its analysis and its assumptions, and this information would help Environmental Defence assess, challenge and test the evidence that's been put forward by the OPA.

In our submission, the OPA shouldn't be allowed to put forward what is a summary of only the details that it wishes to put on the record and hold back what might be the underlying reports or memos.

If we are attempting to test the case and test what the OPA has and has not done, we submit they should put before the Board and put on the evidence the underlying memos and reports.

Again, there's two reasons for that. One is the reports will contain more details so that we can better assess whether certain assumptions may or may not be valid or not, or whether certain analysis is valid or not, and B, also to get a better idea what steps were taken.

I'm in a difficult position here, because I don't know what the underlying documentation is. We had asked for a list of the documents so that we could then look at that list in comparison to what was provided and agree with the Ontario Power Authority that it had provided the key documents.

So I'm in a bit of a difficult position asking for documentation. I admit I don't know what it is, but we're simply asking for what are the key reports. At some point, the OPA made an assessment that CDM and DG wasn't a valid alternative. Presumably this was based on a report or memo, and we are asking for those key documents.

Moving on to Interrogatory No. 29, this interrogatory requests copies of the KWCG working group's meeting agendas and minutes. The request was refused, in our submission, without providing an explanation or justification.

The response didn't, for example, say that it would be overly onerous to provide these agendas and minutes. The responses didn't say whether the minutes and agendas even existed or how many there were.

So, again, I'm a bit in the dark, because that information wasn't provided in the interrogatory response. However, we submit these materials are relevant, because Hydro One itself is pointing to the working group's support for this project as a reason for why the Board should approve it.

So Hydro One has made this a relevant issue. In particular, also the timing seems to indicate that this support from the working group was not based on an in-depth analysis and potentially was not based on an analysis of CDM and DG as alternatives.

And the reason we think this may be the case is that in a March 8, 2012 letter to Hydro One, Amir Shalaby of the OPA states that the KWCG working group supports the OPA's recommendations with respect to the project.

It's unclear to us how the working group could have decided to support this project on March 8 or by March 8, 2012 even though a year later the working group still has not finished its report on this matter. It's also unclear to what extent they considered CDM and DG.

The requested materials would presumably indicate whether, when and to what extent the KWCG working group examined alternatives to the proposed project. There is nothing to indicate that these agendas and meeting minutes would be overly burdensome to produce. However, if that was the case, if there are vast volumes of materials, Environmental Defence would, in the alternative, request that the only documentation be provided was the documentation presented to the working group before March 8, 2012. That would be what they considered before coming to their conclusion and the minutes of their meetings of that time.

Again, in Environmental Defence's submissions, these materials are relevant to the core issue Environmental Defence wishes to raise, because they would show whether and to what extent the working group analyzed CDM and DG as alternatives prior to indicating their support for the project.

I would like to move on to Interrogatory No. 31, unless there are questions thus far.

MS. CONBOY: No. Please go ahead.

MR. ELSON: Interrogatory 31 requests Hydro One's load forecasts for the six subsystems in the KWCG area, as well as the studies and analyses underlying this forecast.

And to boil it down, the issue here is about potential differences between a forecast produced by Hydro One and a forecast produced by the LDCs.

And, again, as I discussed earlier, we have a potential concern with the forecasts that were produced by the LDCs. It appears to us that Hydro One must have produced their own separate forecast, in addition to what was produced by the LDCs, as a basis for their long-term economic analysis and in particular as a basis for its discounted cash flow analysis.

I was speaking to Ms. Wise this morning, and it may be there is no separate forecast, so I'll ask that Ms. Wise address that. If there is one, we'd request it, but of course if Ms. Wise says on the record that the only forecast is the one that was produced by the LDCs, then nothing further is required.

However, you know, it appeared to us that there would have been a different forecast, in part because the economic profitability index of this project is 0.2; therefore it's a very unprofitable project. And presumably it's based on a load forecast that shows that the growth is insufficient to bear the full cost of this project.

So that's why it had appeared to us that there would have been a separate, different Hydro One load forecast; but again, Ms. Wise will address whether or not that is the case. If there is a separate Hydro One forecast, we would ask of course that it be provided.

Finally, Interrogatory No. 40 (b) asked for further information relating to operating measures used by Hydro One to address summer peak demands.

Hydro One stated that load transfers were used to address summer peak demands, but that there was limited availability of load transfer capability. This is relevant because these load transfers are another way to address the summer peak demands that drive this project.

So to provide a more full answer, we would ask that Hydro One indicate the amount of load transfer capability that exists between each subsystem of the KWCG area.

Now, of course we didn't ask in our question for that specific data. However, in our submission this would be a more full and complete response to our question relating to the operating measures used by Hydro One to address summer peak demands, particularly when the response indicates that there is limited availability of load transfer capability without indicating exactly what that capability is.

Those are the specific interrogatories that we are requesting better responses to, and I would like an opportunity to reply to my friend's submissions on why they shouldn't be provided, because in some cases we in fact don't know why a response wasn't provided.

But before that, I would like to address one issue, which is that, in our submission, in this particular proceeding there is a heightened importance of full and adequate interrogatory responses. This issue was discussed in our letter, but I would like to highlight it because I think it's very important.

The reason there is a heightened importance for full and adequate interrogatory responses is that there will be no further opportunity for us to seek information from the applicant by way of cross-examinations in this proceeding.

Furthermore, the core of Environmental Defence's case rests on whether Hydro One or the Ontario Power Authority have adequately explored all cost-effective alternatives and whether their own analysis supports this project.

Environmental Defence is not submitting its own evidence on the alternatives or the need for this project, and intends simply to assess whether the applicant has satisfied its burden in this regard. In our submission, we believe this is both an efficient way to address this proceeding and also in accordance with the filing guidelines, which puts the burden on the applicant.

In this context, it is vitally important that Hydro One provide complete answers regarding its analysis and the analysis that the OPA has done with regard to need and alternatives.

On the issue of cross-examinations, I would ask you, actually, to refer to tab 2 of Hydro One's compendium. This is a decision of the Board on a motion to provide full and adequate interrogatory responses in the IPSP hearing.

In this decision, the Board repeatedly notes the importance of cross-examination to follow up on interrogatory responses. In our submission, this additional step of cross-examination in a case such as this provides both fairness to the parties, to ensure that their issues can be heard and that they have the evidence they need to make their case, but in addition to fairness to the parties, it also provides a service to the Board by ensuring that the Board has before it the information that it needs to adequately test and assess the case.

And I'll refer to some examples in this decision. It's referred to in this decision at page 6, page 10, page 11, page 17 and page 21. I may have missed a number of references.

So starting on page 6, second paragraph and the last sentence, in this paragraph, the Board decides that no further information is -- needs to be provided in response to an interrogatory. And at the end, the Board says:

"In addition, the Board notes that the OPA can be cross-examined on this issue by the parties."

So the Board is pointing out that even though it is not requiring further information by way of interrogatories, there is another procedural safeguard, which is cross-examinations, whereby the parties can seek the information they need.

Again, on page 6, the fourth paragraph down, the Board says:

"Once again the Board notes that the parties will have an opportunity to cross-examine the OPA on this issue at the hearing."

And the Board says essentially the same thing a number of times. Over on page 17, the Board states:

"The Board expects that this topic will be further addressed through intervenor evidence in cross-examination."

And so on.

So in our submission, full and adequate interrogatory responses are all the more important in this case because, one, cross-examination is not part of the procedure; and two, the core of Environmental Defence's case is to test the applicant's own evidence, whereas cross-examination would provide a further step that would provide the Board with some assurance that fairness and proper information would -- would ensure fairness to the parties and that proper information would come out.

In this case, because we don't have cross-examinations, we would submit that full and adequate interrogatory responses are all the more important.

And those are my submissions, subject to your questions and subject to reply.

MS. CONBOY: Thank you, Mr. Elson. The Panel has no questions, and it was our intention to give you the right of reply today, so you can be comfortable with that.

Ms. Wise?

MS. WISE: Thank you, Madam Chair.

Submissions by Ms. Wise:

Hydro One has filed our evidence and we've responded to all the interrogatories. We've given answers to everything that's been asked.

It seems that Mr. Elson is suggesting that we should be putting forward all the evidence -- all the materials underlying our evidence, underlying our case, on the record for the Board and the intervenors to consider. I'm not sure that that would be useful.

It sounds like a disproportionate amount of materials that would have to be covered, and more importantly, Mr. Elson's submission is based on relevance, which we -- we don't argue that this material might be relevant. It's just not probative of the matters that we need to establish in order to get this project approved.

What we believe we have done is made a case in our filings and in our responses that meets the burden of proof establishing the need for a transmission solution for this load. And Mr. Elson, on behalf of Environmental Defence, seems to be seeking information on, by his own words, the potential for there being some indicators for a case against the case that we're submitting.

It's not a situation where he is asking for Hydro One to produce some evidence that he knows is going to provide the Board with an alternative view to the evidence that has been submitted. It's purely speculation on his part.

And if the evidence that he is seeking or the materials that he is seeking on his review indicate that Environmental Defence does have a position to put forward, then he will be making his submissions. I believe that's beyond the scope of interrogatories.

As I said, we believe our case meets the burden for establishing need. He is not advocating the position that the need doesn't exist or that the need can be adequately addressed by alternatives. It's something he wants to explore, and, again, our position is that that's for the Board to determine based on the evidence we've put before it.

Mr. Elson has suggested that he can use the interrogatory process as a substitute for cross-examining our witnesses. Had there been an oral hearing, we would have put forward these witnesses, but the witnesses would have been attesting to the evidence that we put on the record and they wouldn't have available to them the type of information that Environmental Defence is trying to elicit. They would be speaking to the reports and to the filings, and not to how these documents were prepared.

Although Mr. Elson is suggesting that Environmental Defence is not putting forward any evidence and, in fact, they haven't put forward any evidence. Much of his position here today is based on matters not in evidence, but that he asserted as if they were evidence with respect to things like exaggerated load forecasts and other matters of that nature. So there isn't any -- there isn't any evidence to support what he is asking for.

And with respect to the specific question -- I'm going to start with 31, because that's the one that we have on our plate, and Mr. Zacher is going to respond to the others.

MS. CONBOY: Sorry, may I interrupt for a minute?

MS. WISE: Sure.

MS. CONBOY: I'm stuck on the load forecast for a moment. What I hear Environmental Defence asking is you've put forward a load forecast that is based on the cumulative load forecast of the distribution companies, and he thinks it's probably too high.

So he is asking you whether Hydro One has prepared its own load forecast in that area. How is that not an appropriate -- how is that putting -- I'm struggling with how that is evidence that perhaps Environmental Defence is putting forward.

It's simply a question that I don't -- is there another load forecast available?

MS. WISE: Right. But he has asserted that the load forecasts have been exaggerated. That information isn't on the record.

MS. CONBOY: Okay.

MS. WISE: But, with respect, the question you've just asked is the one I'm about to address, number 31. There doesn't -- there aren't any other independent load forecasts in existence for Hydro One to give.

We did rely on the forecasts that the LDC gave to the OPA and which the OPA is presenting.

So with that, I will hand it over to Mr. Zacher to address the balance of the interrogatories.

MS. CONBOY: Thank you, Ms. Wise.

Submissions by Mr. Zacher:

MR. ZACHER: Thank you, Madam Chair. So there are seven or eight interrogatory questions that are addressed and information that would be in the hands of the OPA, and I'll deal with each of those in turn.

But if I might, just for context, explain in principle why I submit the information that my friend is asking for is inappropriate. And with that sort of backdrop, I'll then deal with each of the interrogatory questions.

This is, as Mr. Elson has said, a leave to construct application. The onus, the burden, is on the applicant, Hydro One, as supported by the OPA, to establish a need and also to establish that the recommended transmission solution is a preferred alternative, including a preferred alternative to DG and CDM.

So I entirely agree with my friend. It's not incumbent on Environmental Defence to establish why DG or CDM are better alternatives. The onus is squarely on the applicant.

And what my friend asks for, essentially, is all manner of historical data and underlying information and analysis that went into the Hydro One and the OPA case, and the reason why Environmental Defence asks for that information is threefold: number 1, because it's decided of its own volition that it is not going to put in any evidence on need and alternatives; number 2, because if the historical information suggests that this need was identified at sometime earlier, then it belies the position today that it is urgent or immediately needed; and number 3, that if the historical information shows that this need was identified earlier on, then Mr. Elson would like to make the submission that OPA and Hydro One ought to have been earlier considering DG and CDM, and in that event actually seeks an order in this proceeding as against Hydro One and the OPA. And that is a finding that they failed to adequately consider DG and CDM earlier on and an order that they ought to change the way in which they assess DG and CDM in their planning processes.

And my position is that all of those reasons are wholly improper bases for the requests that have been made, and the reasons for that are that the historical information and underlying data and memorandums, et cetera, are not relevant to the application that is before you.

The application as constituted succeeds or fails based on the information which Hydro One, as supported by the OPA, has sought to put forward. And it is not relevant how this particular need was assessed over the passage of time. The OPA and Hydro One have clearly laid out some background information. They've said this is something that was considered as part of the first IPSP back in 2007.

Later, even after the IPSP, steps were taken to implement it. There was a pause in order to sort of assess the impact of the economic downturn.

So there's appropriate context that has been provided, but all of the detail is simply not relevant to your decision whether the case that Hydro One has put before you is sufficient to satisfy the onus or burden that is on them.

And frankly, if -- when Environmental Defence wants to say, which Mr. Elson has clearly said they're going to say, which is that Hydro One has not satisfied that burden, then say it. You can say it in argument.

Mr. Elson in his submissions made all sorts of arguments as to why certain things haven't been adequately taken into account, why Hydro One hasn't made out the cost-benefit analysis for the transmission solution vis-a-vis CDM and DG. So if there's a paucity of evidence to satisfy that onus, then say it. You can say it in argument.

It is not required - in fact, it's counterintuitive - to say you need more information in order to make the argument that there is insufficient information to satisfy the burden.

It is, secondly, not -- the information that is sought is not properly the purpose of interrogatories. So interrogatories in the Board's rules are clearly set out as a tool in order to simplify evidence and in order to clarify evidence. And the interrogatories requested -- and this is specified at Rule 28.02 -- must contain specific requests for clarification of parties' evidence or documents.

And what interrogatories may not be appropriately used for is as a general discovery tool. And the Board has said specifically in request -- in regards to requests for all sorts of background and historical information, that that is not an appropriate use of interrogatories and it is not relevant and it is not helpful to the Panel.

And I don't think I need to turn you to it, but at tab 2 of Hydro One's motion record, responding motion record, is the decision of the Board in the IPSP decision, where requests for all sorts of background information were asked for, and the Panel in that case said: Not helpful, and it is not an appropriate use of interrogatories.

And just to respond to one particular point that my friend made, was that it's not fair or it's not appropriate for the OPA to put forward its summary and to hold back all underlying information, and what the OPA and Hydro One should be doing is effectively dumping on the Board as part of their application every bit of underlying data, information, memos, reports, e-mails, et cetera, that have -- that are part of an assessment of this need, no matter how far back in time it goes.

And that is simply not appropriate. It is, again -- it's Hydro One's application; they put the evidence before you, and the Board decides whether that evidence is sufficient to discharge the onus and the burden.

And if what my friend wants to do is to ask questions about that specific evidence in order to better clarify it and to simplify it, that is acceptable. So if there are assumptions that are set out in the evidence, if there is analysis that's set out in the evidence, an appropriate question is: Please provide me with the underlying data that goes into this particular assumption or this particular analysis. And that is a fair and legitimate use of interrogatories, but what is not sufficient is to -- what is not acceptable is to say: Give me every single document that the OPA has ever prepared, going back an unlimited point in time, that has anything to do with the assessment of need in the KWCG area.

And the third reason why the request is inappropriate is because -- as is clear in Environmental Defence's written submissions and echoed by Mr. Elson in his oral submissions -- one of the reasons that the information is requested is so that Environmental Defence can, if they deem it appropriate, seek an order from the Board or a finding from the Board that the OPA and Hydro One have failed in their consideration of DG and CDM, and that the Board make an order that they change the manner in which they go about their planning.

And that is simply outside the scope of this proceeding; it's not part of a section 92 application.

So I will go through each of the questions with that sort of general framework. Let me ask first if there's any questions from the Panel.

MR. ELSAYED: None from me.

MS. CONBOY: Thank you.

MR. ZACHER: So the first, I gather, Interrogatory No. 1, which dealt with peak demand, my friend says he doesn't require that anymore.

So the first interrogatory for which additional information is sought is IR No. 5, which can be found at page 26 of Environmental Defence's motion record. And on this one, I should just say this is an IR that, in my submission, has been fully answered.

So it was a request of the OPA and Hydro One to indicate when they first became aware of the need to take steps to ensure compliance with the ORTAC criteria. And in the response, they say they began to assess the needs and options of the KWCG area based on the ORTAC criteria in 2007 as part of the Integrated Power System Plan.

So I don't understand what possible additional information my friend seeks. It's clear in the answer they began to assess this need in or about 2007, and then, in fact, OPA and Hydro One even provide a more fulsome answer and they talk about how it was further considered at the conclusion of the IPSP and over the ensuing years.

Alternatively -- again, this is a request for information back in time, and it is simply not probative in any way of the decision that you have to make as part of this application, which is: Does the evidence as it's constituted meet the burden or not meet the burden?

The next my friend seeks information for is Interrogatory No. 10, and that can be found at page 29 of Environmental Defence's motion record.

So this is a request about information concerning the Peaksaver program. And in question 29(a) and (b) –- or, sorry, 10(a) and 10(b), Environmental Defence asked for the cumulative number of Peaksaver and Peaksaver Plus participants and the associated demand reductions, and the OPA provided that information.

In questions (c) and (d), what is being asked for is potential Peaksaver participants and demand reductions, and again, the OPA has answered this question. It has said it doesn't have estimates of that potential. It doesn't do it, at least at this point.

And what Environmental Defence has done is to say: You haven't told us why you don't do this, and so therefore they've asked the question anew. And in my submission, the question was asked, the question has been fully answered.

My friend referred you to Rule 29.02, which he suggests indicates that a more fulsome answer has to be provided.

In my submission, that does not apply. That rule says that where a party is unable or unwilling to provide information, and where they contend the information necessary to provide an answer is not available or cannot be provided with reasonable effort, then they are to set out the reasons.

This is not a question where the OPA is saying, We've got the information, but it would take a monumental effort to go through e-mail searches, et cetera, in order to provide it. That is not the case.

What they're saying is, We don't estimate this potential, we don't do it, and so therefore we can't provide it to you. And really what my friend would be asking is, Go do a bunch of work and analysis that you haven't done.

What Environmental Defence has done, in addition, is to say, Well, if you can't provide that information, in the alternative, we have a new request. And they've asked the OPA to provide additional estimates, and that ought to be refused simply because it is a new request. Parties aren't entitled to further rounds of interrogatories.

But even a more fundamental reason is Environmental Defence says, We would like this additional information so we can produce our own estimate. Well, Environmental Defence has said, We don't intend to adduce any evidence or put in any evidence.

So to suggest that they need the information so that they can do their own estimate belies the submission that they're not going to put in any evidence.

The next interrogatory, if I could ask you to turn up, is Interrogatory No. 22, and that's found at page 37 of Environmental Defence's motion record. And this has to do with 60 megawatts of local generation applications that have been submitted to the OPA under the FIT and the CHP standard offer program. That is referred to in a City of Guelph council report.

And what Environmental Defence has asked in this interrogatory is that the OPA update its supply capacity tables for the various subsystems based on the hypothetical assumption that all 60 megawatts is contracted as soon as possible. So that's the request.

And just to provide some context for this, because there are other interrogatories that were asked about this particular issue, and, in my submission, it's of marginal relevance. The OPA in earlier answers clarified that none of the 60 megawatts is contracted. The FIT and the CHP SOP programs have been under review.

In fact, in just the last week the Minister issued a new directive to say that all large FIT applications will now be replaced by a competitive procurement process and that all of the existing large FIT applications that do not have contracts will have their security deposits refunded, and that those applications will simply be entitled to participate in such further procurement when and if that occurs.

All of the megawatts referenced in the City of Guelph council report that are part of the FIT applications are large FIT applications. They're all larger than 500 kilowatts. And so the OPA -- and the OPA has also clarified that not all of these applications can be -- even if they were granted contracts, can be considered as addressing the potential needs, because it depends where they connect.

So whether they will satisfy the supply capacity or supply interruption needs depends on where they connect. And, further, the OPA has said - again, this is in the evidence - that even if all of the 60 megawatts was connected, it wouldn't satisfy the needs that have been identified.

So just for context, this is an interrogatory that's aimed at a hypothetical question, a hypothetical scenario, that based on the evidence is highly, highly unlikely.

And what the OPA or Hydro One answered in the specific interrogatory on this question was: Here's that backdrop. However, even if we were to carry out this exercise of making this hypothetical assumption, we can't allocate this 60 megawatts to the various supply capacity tables without additional information, in particular, the connection points.

And what Mr. Elson has said - and he is correct on this - the OPA does -- the OPA as a whole does have connection points, of course, for all of the applications that are part of the FIT or other programs, but that is confidential information that can't be released without the consent of the applicants.

And, more importantly in this case, the OPA would have to know what the applications -- which are the applications that are actually referable to this 60 megawatts. You need to know both the name of the applicants, and then you have to have that information, and then you would still have to get consent in order to release the information because of the confidentiality requirements.

And what I would -- my submission, Madam Chair, is it's simply an exercise that is not necessary to undertake, given the fact that all of the 60 megawatts is uncontracted, more than half of it relates to large FIT that is no longer -- been replaced by a competitive program that may occur in the future, and all of the other associated uncertainties I just went through.

The next IR is IR 26, and this is found at page 44 of Environmental Defence's motion record and can probably be appropriately grouped with the next IR, 29, which I'll come to in a moment. And this gets back to the theme I was expressing at the outset.

This is a request for information regarding all steps ever taken by the OPA to assess whether increased CDM and/or DG could avoid or defer the need for new transmission. And coupled with that is the request for all and any documents ever prepared by the OPA in relation to its consideration of CDM and DG in the area.

So it is not an interrogatory that is aimed at a particular piece of evidence and asks that piece of evidence be clarified, be simplified, that targets certain information that is required in order to understand that piece of evidence. It is simply an open-ended, blanket request to track down, to -- to chronicle every step ever taken, and to produce every document ever prepared that deals with these topics.

It is not relevant, it is not probative to the decision before you, and it is just an inappropriate use of the interrogatory process to ask for this sort of information.

Interrogatory 29(b) falls into the same category. This can be found at page 49 of my friend's motion record.

And so this is a request for copies of all the KWCG working group meetings' agendas, minutes and reports. And just to put this in context, so the first part of the question, 26(a), asked:

"Did any members of the KWCG working group request that the OPA implement additional CDM programs and/or procure more DG in the area?"

And that question was answered, and the answer was no, but then the second question is: Well, provide copies of all of the underlying meeting -- meeting agendas, minutes, reports, et cetera, in order to substantiate that answer.

And if you look at how this request has been addressed in my friend's written submissions, and how he addressed this in his oral argument, as well, he says these materials are relevant because Hydro One has pointed to the working group's support of this project as part of its justification for its application.

And Environmental Defence questions how the working group could have supported the application if its final report has not yet been prepared. It says even though one year later, the working group has still not finished its report in this matter.

And so in responding to this question, the OPA got the consent of the other working group members, including Hydro One and all of the affected LDCs, to release the draft working group report, which is near complete.

So a better response has actually been provided than what was requested. So the OPA has, in effect, provided my friend with the end conclusion of the working group. And they've also provided -- and this can be found at tab 9 of our motion record -- letters of support for the application from all of the LDCs that were members of the working group.

So this is one where I'm at an absolute loss to understand why, having provided more than what was requested, Environmental Defence is still maintaining its request for all of the underlying data. This really is symptomatic of what this motion is, which is a fishing expedition. It's a motion that tries to supplement the fact that Environmental Defence has decided not to put in its own evidence, and so, rather than asking to clarify, simplify and understand the evidence of the applicants, it's simply going on a wholesale fishing expedition for whatever information there may have been over the last five, six, seven, eight years.

The final interrogatory is No. 40, and that is at page 51 of my friend's motion record. And it's 40(b), and the question here was what other operating measures were investigated, and the question was fully answered.

The OPA and Hydro One said in addition to opening bus tie breakers, other operational measures such as load rejection, if available, and load transfers, limited availability, may be used to ensure safe and reliable operation. So the question is answered.

What's being asked now is a follow-up question, which is: Tell us the amount of availability. What do you mean by "limited"?

It's a new question, but in any event is a question that has been answered. The OPA and Hydro One have indicated in IR No. 40 that these are temporary operational measures, and moreover in the answer to Environmental Defence's Interrogatory 39, which is at tab 10 of our motion record, they say there is little to no capability.

So this is -- again, this is a question that has been answered.

Those are my submissions on each of the interrogatories. I just want to address one final point my friend made, which is that there is a heightened importance for the information in this case, because Environmental Defence is not putting in its own evidence and because there's -- this proceeding will be done by way of written hearing as opposed to oral hearing.

So just to address each of those, there can't be two sets of rules. The Panel obviously, when it decided this matter was appropriate for a written hearing, did so with an understanding of what the rules say with regards to interrogatories, which they're to simplify, clarify and understand the evidence. And the purpose of interrogatories as prescribed by the rules can't change depending on how a hearing is constituted. It's not, in my view, legitimate for a party to say because the Panel has chosen one style of hearing, interrogatories actually take on a purpose and function different than that set out in the rules. That can't be, that simply can't be the case. And more importantly, perhaps, the real reason that my friend is saying this is more important in this case is because Environmental Defence has chosen of its own volition not to file any evidence.

It can choose to do that, but having chosen to do that, that doesn't thereby entitle Environmental Defence to use interrogatories in a way that is not in accordance with their purpose, which is to simplify and understand information in the record.

It can't, because you've decided not to file your own evidence, decide that you're going to approach your case by asking other parties to provide you with all sorts of historical information that you can then use as evidence for your case. It's not appropriate that -- interrogatories aren't a general discovery tool, and in my submission it's not an appropriate use of them.

Those, Madam Chair, are my submissions, subject to any questions you may have.

MS. CONBOY: Thank you, Mr. Zacher.

I think it might be a good time to take a break, and we will break for 20 minutes and return at 11:30 and hear your reply, Mr. Elson.

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

--- On resuming at 11:36 a.m.

MS. CONBOY: Thank you, please take a seat. Mr. Elson.

Reply Submissions by Mr. Elson:

MR. ELSON: Thank you. I would like to address in reply the issues as they came up this morning, in that order. So I might be jumping around a bit, but I will start with, I believe, Mr. Zacher's discussion of tab 2 of their compendium in the IPSP case.

I believe Mr. Zacher said that this case stands for the proposition that the kind of background information that we are seeking is not helpful and not appropriate use of IRs.

In our submission, the IPSP case is both distinguishable and it doesn't in fact stand for that proposition. Firstly, the IPSP case is distinguishable because, as repeatedly referred to that decision, cross-examinations were going to occur and, therefore, the Board had assurance of knowing that parties were going to have the chance to ask further questions, which is not the case here.

Secondly, we submit it doesn't stand for that proposition because the Board, in fact, ordered that a number of interrogatory responses be provided, including some that could be said to be akin to the ones that Environmental Defence is requesting in this proceeding. Although some interrogatories were rejected, that's true, and there are particular facts that we can't and don't need to get into, at page 25 and 26 and 27 the Board orders a large number of interrogatory responses, further and better interrogatory responses.

For example, on page 25 of the IPSP decision, the Board ordered that:

"The OPA shall provide to the GEC copies of the reserve and insurance calculator, the capacity planning tool and profile generator for wind."

Number 4, the Board ordered that:

"The OPA shall provide to GEC's experts the opportunity to attend at the OPA's offices to join with OPA staff in completing one or more model runs employing assumptions and inputs as selected by GEC."

And that order goes on further. That's at the top of page 6 in the IPSP decision. And I refer to those specific orders because I believe Mr. Zacher is providing too narrow of an interpretation of what IRs are meant for, and clearly the IPSP decision doesn't limit them, as he appears to suggest they should be, to a specific request for one data point or a very narrow request.

The IPSP decision, in my submission, stands for the opposite, in that IRs can be used in a variety of ways to gather information that is relevant. And I would refer also to the Board rules, and interrogatories, which is Rule 28. The rules are at tab C of our motion record, and Rule 28.01 says that:

"In any proceeding the Board may establish an interrogatory procedure to: ..."

Point (c) is:

"Permit a full and satisfactory understanding of the matters to be considered."

And, with respect, we would submit that the interrogatory process is broad enough to capture the kind of information we are seeking today.

Mr. Zacher also seemed to imply what we were requesting -- and I've written down the words -- "were every document forever at all related to need". In our submission, our requests are much more narrow than that. I won't get into that now, but when I discuss the specific IRs, our requests are not as broad as so described.

Mr. Zacher also discussed our request for, in his words, an order from the Board, but in fact our request was potentially we may request order or directions from the Board in relation to a potential failure to assess DG and CDM in a timely manner, and I believe the submission was that somehow this kind of order was out of jurisdiction and couldn't be made in a section 92 application.

My response would be twofold. First of all, I don't see any reason why what we may be seeking would be out of the Board's jurisdiction, and I could point the Board to an example when an order such as this occurred, which would be EB-2007-0680.

This was a Toronto Hydro rates case for their 2008 to 2010 rates, and at issue was CDM and DG. And I will read from paragraph -- from page 62 of that decision. The Board ordered as follows. It says:

"The Board observes that the applicant's study of distributed generation has not been rigorous. Therefore, the Board directs the applicant to conduct a study into the capability, cost and benefits of incorporating into the applicant's system a significant (up to 300 megawatts) component of bidirectional distributed generation in Toronto."

And the order goes on to discuss what the study should contain. It says:

"This study should also be responsive to any new policy or regulatory developments in these areas. This study shall be filed as part of the company's next application dealing with rates beyond the test period dealt in this proceeding."

We are not seeking an order such as this. I raise this example to highlight our submission that the Board does have the jurisdiction to make orders or directions in cases where it feels or believes that the applicant's study has not been as rigorous as it should be, as occurred in Toronto Hydro's case.

Secondly, and perhaps more importantly, Mr. Zacher referred repeatedly to us seeking an order. That would be an order, again, in relation to the failure to assess CDM and DG in a timely manner.

Environmental Defence does not go that far. We do not necessarily feel that an order or even a firm direction would be needed. Even a non-binding statement from the Board in relation to its expectations about how CDM and DG should be incorporated as part of an integrated planning process would be an important and potentially powerful outcome of this case, which is why we submit it is relevant to look at the timing of Hydro One and OPA's analysis and assessment of these alternatives.

I'll move on to the IRs, unless perhaps one of you have a question.

MS. CONBOY: I may have a question, but let's get to the -- because you may respond to it when you deal with these specific interrogatories.

DR. ELSAYED:^ I don't have anything.

MR. ELSON: So with respect to Interrogatory No. 5, that interrogatory asks when the OPA was first aware of the ORTAC criteria problems, and Mr. Zacher says he doesn't understand what we're seeking.

I feel like that's fairly clearly set out in our letter, and I believe it's clear from the face of the interrogatory response that what was provided wasn't exactly what was requested.

What we're asking for is a response. If the OPA responds and says, The first time we ever had an ORTAC criteria breach was in 2007, then that of course is the answer. But it is far from clear, from the face of the interrogatory response, that that is the answer, and, therefore, we're simply requesting, and believe it is relevant, the information as outlined in that interrogatory.

MS. CONBOY: So I heard Mr. Zacher say that that was their answer in terms of -- they began to assess it in 2007.

How is that different than you providing an argument saying, Well, starting in 2007 is not good enough?

I'm trying to see the difference between what you can provide in argument versus I still need more information in order to support my argument.

MR. ELSON: The further information we are looking for to support our argument is when they were first aware of the problem. The interrogatory response describes when they first started assessing the needs and the options, which in my mind is different than clearly stating on the record when OPA was aware of the problem. For example, when was the first ORTAC breach? It seems to me that that occurred before 2007. I don't know the answer to that question, and that is a piece of evidence that we would like to support our argument.

If it turns out to be the case that the ORTAC criteria were breached first in 2005, that would be different than 2007 or 2003 or even 2000. I don't know what the answer to that question is, and it would be relevant to us making our argument about the timeliness of the OPA's assessment of alternatives.

MS. CONBOY: Thank you.

MR. ELSON: With respect to Interrogatory No. 10 -- this was the Peaksaver interrogatory -- Mr. Zacher characterizes our request as asking the OPA to do a bunch of analysis that they haven't already done. I wouldn't use those exact terms, but applicants often do do analysis in providing interrogatory responses. That is part of what interrogatories are. Frequently it's not simply providing a document that already exists; some sort of analysis needs to be done. And I don't believe that that is a reason to refuse to provide a response.

In particular, the information that we are requesting, which is the potential number of Peaksaver customers, in my submission is not something that would be too complicated or too onerous to determine. We have suggested an alternative set of information that could be provided, because we believe that number, the potential Peaksaver and Peaksaver Plus customers, could fairly easily be derived from information that is in the control of Hydro One and the OPA.

Peaksaver is a program whereby residents, as I understand it, agree to have their air conditioners shut off during peak periods, so basically you need to figure out how many people could potentially participate in this program. I presume that there are province-wide estimates of the number of people who are available or who could participate in the program, and that is in effect the number that we would need to provide -- to determine an estimate.

There was discussion that our request for alternative information to provide our own estimate is, in fact, a new or different request. In our submission, that would simply be providing alternative information, which is what the Board rules^ contemplate. And again, that's in Rule 29.02B, and the final part of that Rule says that if information can't be provided without reasonable effort, the applicant is required to set out the reasons for the unavailability of information, as well as any alternative available information in support of the response.

MS. CONBOY: So if the OPA is saying: We don't undertake this type of analysis, we don't look at the –- we don't estimate what the potential, going forward, of Peaksaver is, because we don't have those estimates, Hydro One doesn't put that into their analysis or in their application to determine the need for this transmission upgrade, is that -- how do we go further, then? Because they're saying: We don't have this analysis. We don't carry out this analysis.

Your argument may legitimately be: Well, you should, and that would go into an argument phase as opposed to saying -- and we may very well determine, yes, actually, they should, and so on a go-forward basis this would be something they would want to do.

But with the evidence in front of us, they're saying: We don't do it. Are you in a sense saying: Well, you should be doing this type of forecast, so go and do it and put it into your analysis, and then we'll determine what the need is?

MR. ELSON: Perhaps I could describe it as saying that our argument would, on the one hand, say that the proper analysis hasn't been done. But I also -- and we will be putting before the Board evidence that comes from the applicant suggesting that CDM and DG are potential alternatives. So we would be relying on their own evidence, and if the OPA is able to provide us an estimate without too much burden -- which, in our submission, it wouldn't be particularly burdensome to provide this estimate or to calculate this estimate -- that would assist our case, because we could point to the Board an example of X megawatts of CDM potential that is out there and attainable in Guelph.

And this is the source of this question.

Now, these don't have to be exactly precise estimates. The OPA can state its assumptions and explain what can and can't be taken from the estimate that it calculates, but we would like to have that estimate to point to the Board an example for why we think that CDM could be part of a potential alternative.

MS. CONBOY: I see. Okay. Thank you.

MR. ELSON: So moving on to Interrogatory 22 that's related to the FIT and the CHP SOP projects that have been submitted to Guelph -- sorry, submitted to the OPA that are in Guelph, the reason that we would like this information is these are project proponents that are, in a sense, ready to go.

So this 60 megawatts of DG, that's not necessarily the potential of DG. The potential for DG could be, in fact, significantly higher, but if we can assess what impact these 60 megawatts would have on the overall load growth which is being used to justify this project, that would relate to both the DG potential, or at least part of the DG potential, and the timing issue.

It would be one thing if the OPA were to say: We have a significant DG potential but we don't know if people are going to put their –- if people are going to seek contracts, we don't know if there's potential proponents. What we have in this situation is, in a sense, quite unique, because there are already 60 megawatts of projects that proponents want to develop.

The fact that some of these projects that are in the large FIT category are not going to be getting contracts through that process is, in one sense, not relevant because the point is that those projects are there and they could be developed.

So if the Board were to decide or if the Board were to reject this application and the OPA were to have to look at the options again and anew, they could include those 60 megawatts as part of their DG analysis, because those projects aren't too uncertain. Those projects are people who want to participate in those programs.

So what we're looking --

MS. CONBOY: What do you base that on? Sorry, what do you base that on, because I heard those projects are very uncertain?

MR. ELSON: The uncertainty doesn't arise from a lack of proponents or a lack of potential. The uncertainty arises because the OPA hasn't been contracting with them. So if those are a more cost-effective option, then in theory, at least, they could be contracted for. There are the proponents there.

MS. CONBOY: Thank you.

MR. ELSON: The real constraint, in our submission, is whether or it would be more cost-effective to do those projects which are in the pipeline, and if that is the case, we would like to -- providing an understanding of how that would impact the load growth is what we're looking for.

Mr. Zacher made reference to the confidential data in relation to the connection points. In our submission, none of this data would actually need to be released to anybody. The data would be provided in a highly aggregated format.

So what we've asked for is a revision of table 3. The revision of table 3 will not in any way provide data relating to specific projects. These are a large number, 60 megawatts of projects. In our submission, there isn't a confidentiality issue. They wouldn't need consent from the applicants.

If there was a confidentiality issue, we could sign a confidentiality agreement through the Board processes, but I don't even believe that would be necessary, because the data that would be provided at the end of this interrogatory would be sufficiently aggregated that an individual customer's data wouldn't be released.

So, again, the idea that DG is uncertain is not because of a lack of proponents, and that is what this interrogatory is meant to address and why we believe it continues to be relevant for the OPA to advise us how its demand forecast would be revised if these particular projects were contracted for.

Moving on to number 26 and 29, Mr. Zacher's primary complaint with these two interrogatories are that they do not target a particular piece of information. In response, first of all, I again point to the IPSP case, which doesn't suggest such a narrow view of what an interrogatory response is supposed to be.

Secondly, in a more practical sense, Environmental Defence didn't have the opportunity to ask a more particular question, because a significant amount of the OPA's analysis with respect to DG and CDM first came to light in the interrogatory responses.

So perhaps I could provide an example, which would be Interrogatory Response No. 26. If I could ask you to turn to tab 26 of our motion record, that provides interrogatory 26, and this was our question about the steps that the OPA had taken to assess CDM and DG.

So in response to this interrogatory, for the first time Environmental Defence was provided with the OPA's analysis of why, in its opinion, DG is not cost-effective. So that appears at page 46 to 48 of our motion record.

This is a brief summary of the key points that the OPA feels is relevant to this assessment of DG in terms of cost-effectiveness. So this came to us by way of an interrogatory response. We cannot ask for further particular questions about parts of this analysis, because interrogatories have already been completed.

And I'll provide an example. On page 3 of the attachment -- and, again, this is Exhibit I-2-26, attachment I, page 3, which is also page 48 of our interrogatory response. This is just one example of a question that we would have about this DG analysis, which is in column B. There is a figure for the estimated present value of all-in cost of additional generation required in the rest of the province starting in 2018.

This is the figure that appears is meant to represent the avoided cost of additional generation. We don't know how that figure was calculated and it appears, based on the interrogatory response, that that number includes only the operational -- or the incremental cost of the avoided cost of generation and not the capital costs, which is central to what we believe is the flaw in this document.

However, if we were to be provided with the underlying analysis, it would be more clear exactly how that figure of $100 million of avoided generation costs was calculated.

Secondly, the column B lists it as an all-in cost, but other portions of this interrogatory response suggest it's not all in and that it is only operational and not capital costs. So it puts us in a difficult position to properly assess and test this evidence without the underlying documentation.

DR. ELSAYED: Did you find it necessary to have the documentation, or could you have asked simply what costs were included in that figure?

MR. ELSON: That's an example of one question I would have. I couldn't speak for what other specific details we might need in relation to other aspects of this document. Providing just that information would be of assistance, but providing the full background documentation, and when I say -- that might be one report, that might be two reports. It might be one report and two memos.

If we were to have that, then we would be able to test all of the underlying assumptions, not just this specific example. This is just one example, and I frankly don't have the technical expertise to relate at this point to all of the other potential questions we might have with respect to this explanation.

So, in a sense, we didn't have the opportunity to request a more particular question, and I don't see why it would be more efficient or better to ask a more particular question, when what could be provided is whatever is underlying this, whether it be a memo or report.

I believe, again, Mr. Zacher referred to our request as being any document at all times, and again I believe our request is more narrow than it has been characterized. And perhaps I can just read part (a) of Interrogatory No. 26. It's requesting a list of steps. It's not in relation to need, more broadly. It's specifically the steps taken by the OPA in relation to CDM and DG as an alternative.

I don't know how many documents that is, but I can't imagine it would be a large volume of documents or that it would be too burdensome.

I will point out in part (b) we have requested a copy of all documentation, and in brackets "(e.g. memos, reports, etc.)". That specific wording may be too broad for a Board order, and perhaps the Board would want to order a copy of key memos and reports prepared in relation to the OPA, and that would satisfy our interest.

The interrogatory is not intended to, of course, catch e-mails or any sort of documentation. It's only supposed to capture the key documentation.

In the IPSP case, the Board was concerned about the overly broad nature of some questions and, in some cases, re-jigged those questions and narrowed them somewhat to include in their order, and we would request if the Board is concerned about an overly broad request, that it do so in this case.

And this would be a perfect example where, instead of ordering that all documentation be provided, that, for example, key documentation be provided or key reports or memos be provided.

In particular, for Interrogatory No. 29, this was described as a fishing expedition or wholesale request for documents. With respect, this isn't a fishing expedition. A fishing expedition is somewhere where you have no reason to believe that something might be the case, and you are making a broad-brush request for documents without any foundation supporting their relevance.

In this case, we have a letter from March 8, 2012 that indicates that already, back at that early time, the working group had determined and decided that the OPA's chosen alternative was the best alternative.

So that is the reason we have asked this question. It's not -- it wasn't a question that we asked without due consideration and without a reason to believe that there might be something there.

And, again, what we're asking for is the meeting agendas and the minutes. This is not an onerous request, and it's not an unduly large documents to be provided. And, again, it's relevant because it relates to what the working group actually looked at in relation to CDM and DG before they made their recommendation.

The OPA in its application in a number of cases is quick to point out that this working group supports the chosen option. And I believe that we should -- it would be relevant to the Board and would assist us if their support could be tested and we could find out what it was based on.

MR. ELSAYED: The comment about the consent of the members they provided before the release of the report is not addressed here, you're saying?

MR. ELSON: Confidentiality in relation to the working group members? Is that --

MR. ELSAYED: No. This is Mr. Zacher's comment, I believe, if I understood it, that the OPA get consent from the working group members to release the report, in terms of your question about the timing of the release.

MR. ELSON: So I guess the question would be whether it would be overly burdensome for the OPA to have to get consent from all of the working group members in order to provide that documentation.

In my submission, that information is not confidential information. That is information that would be in the hands of public bodies. The LDCs would all be subject to access to information requests, and this information could come out through that alternative means. It's not the kind of confidentiality that would come under the Board's confidentiality guidelines, which are fairly strict. And I believe they are all -- or at least most of them are actually intervenors in this specific case.

So with respect, we would submit that that material isn't, in fact, confidential and should be released.

MS. CONBOY: So you've got the draft working group document?

MR. ELSON: Yes.

MS. CONBOY: You've got signed letters from the members of the working group document, the working group supporting the alternative chosen. And, sorry, that's not -- what more do you want?

MR. ELSON: The documents that we have are what the OPA has put forward to support its position. And what we are requesting is minutes and agenda from the meetings of the working group. And the purpose of that is to determine what the working group actually looked at in terms of CDM and DG.

The OPA is pointing to the support of the working group as a reason for why the Board should approve its application. It does so in its materials; for example, at Exhibit A, tab 3, schedule 1, page 4, the application says:

"The need for the GATR project has been determined by the OPA and is supported by the KWCG area working group."

And there's other examples of that in the evidence.

So if the OPA is or if Hydro One is pointing to the support of this working group as being an important factor for why the Board should approve this application, we're simply asking that they provide the documentation that we would need to determine whether, when that decision was made by the working group, they had considered CDM and DG as alternatives.

That decision was made in March of 2012.

MS. CONBOY: Okay.

MR. ELSON: And it seems difficult -- it's difficult for us to understand how, in March of 2012, that a robust assessment of CDM and DG as alternatives could have occurred or even what assessment did occur. I mean, perhaps the working group, in essence, relied on the OPA's analysis itself, in which case the support of the working group isn't an additional reason to support the application.

MS. CONBOY: So have you looked beyond -- you've looked just behind tab 12 of the Hydro One material? The Kitchener-Waterloo Cambridge Guelph Integrated Regional Resource Planning Report?

MR. ELSON: Yes.

MS. CONBOY: And that's not sufficient?

MR. ELSON: This is not sufficient, because it doesn't explain to us what the working group had analyzed once it had already made its decision, which was back in March of 2012. This report, I believe at page 20, CDM is...

MS. CONBOY: Yeah.

MR. ELSON: CDM is addressed in –- it actually appears to me to be fairly similar to what's in the application materials. It seems fairly similar to the OPA's report itself.

I mean, for example, at page 23, table 4 is basically the same as table 3 in the OPA's report. So this is something that was -- that appears to have been created after the fact. I'm not -- but it doesn't go to the heart of the issue we are trying to get at.

This is something that has been presumably prepared recently, and it appears to have been prepared based on the OPA's evidence in this proceeding.

And what we are looking for is what the working group had before it, and what the working group did to assess CDM and DG as alternatives when it first made its decision to support this project back on March 8th of 2012.

MS. CONBOY: Okay.

MR. ELSON: In terms of the interrogatory responses, all of them are important, but if I were to highlight two that would be particularly of assistance in preparing our argument, those might be 5 and 29, but that is in no way meant to limit the importance of the other interrogatory requests.

I would like to address, I believe, the broader point mentioned by Mr. Zacher a number of times, but moving away from the specific interrogatories, so perhaps I could ask if either of the Board members have any questions relating to specific IR numbers.

MR. ELSAYED: No. Thank you.

MS. CONBOY: On No. 5, this issue of when you were first aware, as opposed to first assessing the options, Mr. Zacher, I believe you made arguments about: Look, we started assessing it in 2007. When we first became aware of it or when there was a first ORTAC issue is of limited or of no probative value.

Can you help the Panel here weigh that up against how difficult it is to get that information?

They seem to -- Environmental Defence wants to know when -- I'm sorry if I don't have the right wording -- when the ORTAC breaches, the ORTAC criteria were first breached, when you first said: Hang on, there's an issue here.

How difficult is that, weighing up -- and then give us the ability to weigh up the probative value of it?

Further Submissions by Mr. Zacher:

MR. ZACHER: So you captured my position precisely. My view is that implicit if not explicit in the answer was that they first became aware of this problem in 2007, because the answer is we began to assess the need as against the ORTAC criteria in 2007.

That being said, if there is -- if it would be of assistance to the Panel and my friend to drill down in that -- on that and be more granular, I understand that that can be done and that it would not be -- it would require some work, but it would not be a significant amount of work.

I say that with one caveat, which is that you can have a criteria that is not met at a particular point in time or looks as though it won't be met. And then of course we had the economic downturn, significant recession in 2008 and 2009, so it may be that a criterion that was not met subsequently was met simply as a virtue of dropping load.

I just want to be open about that, but --

MS. CONBOY: You'd have caveats around --

MR. ZACHER: Have caveats. I'm not the person to answer, but that's my understanding.

And to your specific question, if more detail is needed, I think it -- I understand that can be provided, and it wouldn't be a, you know, Herculean task to do that.

MS. CONBOY: Thank you.

And the No. 29 is more, from what I understand, is more or -- other arguments that you've made aside, it is more work to do, even with the narrowing of the scope that Mr. Elson has provided with respect to the May 1st - I've got that right, May 1st -- March 8th, sorry, 2012 caveat.

MR. ZACHER: That's correct. And, yes, so that would be -- our position remains pretty resolute on that. And I would just augment by responding, in part, to a new point Mr. Elson brought up, which is that the reason more blanket requests were made for all documents, et cetera, as opposed to more targeted requests is much of the analysis wasn't provided until the interrogatories were answered. And he referred you to a particular interrogatory and an analysis that had to do with avoided costs.

I disagree with that. The evidence, as it stands, has got very detailed analysis. That being said, if in the interrogatory that my friend referred to more granular analysis is provided because it was requested in the interrogatory, well, then, number 1, the interrogatory has done precisely what it is intended to do, which is to better clarify and understand specific pieces of evidence.

And, second, my friends had that answer for several weeks now, and so what would have been appropriate in this motion was to have narrowed the request and said, Okay, I now have this analysis. It's still not sufficient for my purposes in order to really understand this. Can you provide specific detail around the avoided cost analysis?

And that would have been the appropriate way to do it. Instead, we're met with the same blanket requests that were made five or six weeks ago, or whenever it was that the interrogatories were answered, and it's not appropriate to come here today and start making it up as we go.

And so my position is that question should be absolutely refused.

MS. CONBOY: Thank you. Would you like to respond to that, Mr. Elson?

MR. ZACHER: One thing. There is one point I did want to respond to quickly. Mr. Elson said that I had been speaking as if Environmental Defence was asking for a particular order or direction of the Board and that the Board has jurisdiction to do that. In fact, that's not what they're asking for. They would be content with some sort of statement.

Their motion documents says: Environmental Defence will seek directions or an order from the Board.

So I'm not making it up. I'm responding to precisely what they said. I'm also not taking issue with the Board's jurisdiction to make findings or make comments that it deems appropriate or to give directions in the context of a section 92 application or any application before it.

I agree with Mr. Elson that the Board has very broad authority and jurisdiction, but what's not appropriate is for intervenors in an application to be seeking orders or directions.

MS. CONBOY: Thank you.

MR. ZACHER: They're not part of an application or motion document, or something of that sort. I just wanted to clarify that. Those are my points in sur-reply. Thank you.

MS. CONBOY: I'll give you a chance to continue with your reply and also respond to any of Mr. Zacher's comments.

Further Reply Submissions by Mr. Elson:

MR. ELSON: Thank you. In terms of orders and directions, I wasn't meaning to draw a distinction between an order and direction, a direction perhaps not being as strong as an order. But Mr. Zacher is correct that we would go farther and would be satisfied with a statement from the Board or that the Board itself may wish to have this information in order to make whatever directions or statements that the Board would see fit.

On the topic of Interrogatory No. 26 and whether Environmental Defence should have been posing, in essence, different interrogatory questions asking for specific pieces of detail. We would have two responses to that.

First of all, what we're asking for is the underlying analysis and input assumptions, and we figure the best way to get that information is for them just to simply provide their underlying memos and reports.

So that's not a request that I can narrow down to a specific number that I'm looking for. When we're looking for their underlying analysis and assumptions in order to test their evidence, by that very nature, that request isn't for a specific number or a specific figure.

Secondly, the particular request or the particular point of clarification I pointed out was one among many, and there may be others, if we were to have a better understanding of what the underlying analysis is.

So we can't necessarily say at this point where all of our potential criticisms are of that three-page memo provided in response to Interrogatory No. 26.

In relation to that issue, I do have one process point which relates to both Interrogatory No. 26 and Interrogatory No. 29. In our submission, if the OPA is now saying that it is too onerous to provide the response that we requested, that should have been listed in the interrogatory response also with specific information explaining to the Board why that is too onerous.

There is nothing on the evidence to say why that is too onerous. There is nothing on the evidence saying how many underlying reports there are. There may be two, which is clearly not onerous.

And I'll provide an example. The interrogatory response to 29, the OPA simply says:

"The OPA is not providing copies of all working group documentation."

If the OPA had responded saying there were 50 meetings and each -- the minutes from each meeting were 20 pages long and provided details about why it would be onerous, that would be a different story, but none of that information has been provided on the record.

In our submission, the OPA is required to provide that information when it refuses to provide an interrogatory response, and that requirement comes from section, I believe, 29 of the rules, in which they're supposed to explain why they're not providing a response. And that information is not available, so we don't believe it is valid for the OPA now to argue that that would be onerous, when there is no information suggesting on the record that that is the case or an indication of how many documents that might be.

MS. CONBOY: Thank you.

MR. ELSON: I believe that was a sur-sur-reply, but I was in the middle of or just about to conclude on some of the earlier points addressed.

In particular, there were some comments about Environmental Defence choosing not to put in evidence, as if that might be something untoward or our fault, to use simple terms. But in our submission, it is more efficient in a process such as this for an intervenor, such as Environmental Defence, to ask for the applicant's own evidence and its own analysis and to review that to decide whether the burden has been met in the case.

If that were not how it is supposed to work, otherwise we would need to -- intervenors would need to retain high-priced consultants in every case, and of course in many cases intervenors do not submit their own evidence and do not hire their own consultants.

If we were to need to hire our own experts to produce evidence on the CDM potential and the DG potential, that would significantly increase the cost that ratepayers would face as a result of proceedings such as this, and that is not how the process in our understanding is meant to work.

Under the filing requirements, the burden is on the applicant to provide the evidence. And that would significantly duplicate the work that would be occurring, as the consultants would in effect be doing the same thing.

What we are seeking to do is rely on evidence from the OPA and evidence from Hydro One and their interrogatory responses, as well as assess what analysis they have done of the alternatives.

Unless the Board has any other questions, those are our submissions.

MS. CONBOY: Thank you. We have no further questions.

You've given us quite a bit to think about. To the extent that we -- we had thought that perhaps we could break for lunch and provide you with an oral decision on the motion today, but the Panel feels that we are unable to do that. However, we certainly want to move this application along, so we will endeavour to get a decision on this motion out as soon as possible.

MR. ELSON: Thank you.

Further Further Submissions by Mr. Zacher:

MR. ZACHER: I apologize. I should have asked to raise this before you made your comments. I just -- one new point. I just wanted to respond to Mr. Elson. I agree with him that we're required, if we don't provide information in response to an interrogatory, to explain why. And he referenced Interrogatory 26. An answer was provided. He just doesn't like the answer. So there was not an obligation to -- because it wasn't a refusal, there was not an obligation to provide a response.

And with respect to Interrogatory 29, it's correct the OPA or Hydro One said the notes of the working group are not being provided, but again, the reason was because the draft report was provided instead.

So I apologize for not raising that.

MS. CONBOY: Okay. Well, on that basis I will give Mr. Elson a chance to respond to that, and then I will say we're done after that.

Further Further Reply Submissions by Mr. Elson:

MR. ELSON: I will apologize, as well, in responding to this.

The response to Interrogatory No. 26 appears at tab 26 of our motion record. The portion where the OPA says that they are not going to provide the answer, they say:

"It is the OPA's view that this analysis is sufficient to explain why the OPA working group determined... "

Et cetera, et cetera.

The response is essentially saying that what has been provided is sufficient. So the response is going to relevancy. The response doesn't explain why it might be too onerous to provide the documents that were requested.

It is the same for Interrogatory No. 29. The response simply says:

"The OPA is not providing copies of all working group documentation."

The response to Interrogatory 29, which is the one I highlighted, doesn't say why that's the case, and particularly doesn't explain why that might be too onerous.

MS. CONBOY: Understood.

MR. ELSON: Thank you.

MS. CONBOY: Thank you.

So unless –- well, I was going to say unless there are any other questions, but I'm afraid to say that.

We are adjourned for today. Thank you very much for coming. And as I mentioned, we will try and get a decision out as soon as possible for you.

--- Whereupon the hearing adjourned at 12:30 p.m.