

ONTARIO ENERGY BOARD

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| FILE NO.: | EB‑2014-0213 |  |
| VOLUME:  DATE:  BEFORE: | 1  January 15, 2015  Christine Long  Ellen Fry | Presiding Member  Member |

**EB-2014-0213**

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 Inc. for leave to purchase all of the issued and outstanding shares of Woodstock Hydro Holdings Inc. under section 86(2)(b) of the Ontario Energy Board Act, 1998;

AND IN THE MATTER OF an application by Woodstock Hydro Services Inc. seeking to include a rate rider in its 2014 Ontario Energy Board approved rate schedule to give effect to a one per cent reduction relative to 2014 base electricity delivery rates (exclusive of rate riders) under section 78 of the Ontario Energy Board Act, 1998.

Hearing held at 2300 Yonge Street,

25th Floor, Toronto, Ontario,

on Thursday, January 15th, 2015,

commencing at 9:34 a.m.

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VOLUME 1

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BEFORE:

CHRISTINE LONG Presiding Member

ELLEN FRY Member

MAUREEN HELT Board Counsel

JUDITH FERNANDES Board Staff

DAVID RICHMOND

GORDON NETTLETON Hydro One Networks Inc. (HONI)

Héloïse Apestéguy-Reux

MARK RODGER City of Woodstock/Woodstock Hydro Services Inc.

JAY SHEPHERD School Energy Coalition (SEC)

MICHAEL HARDING Concerned Citizens Against the Sale of Woodstock Hydro

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Thursday, January 15, 2015

### --- On commencing at 9:34 a.m.

MS. LONG: Please be seated.

Good morning, everyone. The Board is sitting today in an application brought by Hydro One Inc. under section 86(2)(b) of the Ontario Energy Board Act for leave to purchase all the issued and outstanding shares of Woodstock Hydro Holding Inc.

The Board is also here hearing applications by Woodstock Hydro Services Inc. for the following relief: Leave to transfer the distribution system to Hydro One Networks Inc. under section 86(1)(a) of the act, a request to include a rate rider in the 2014 OEB-approved rate schedule of Woodstock Hydro Services Inc. to give effect to a 1 percent reduction relative to 2014 base rates pursuant to section 78 of the act, and leave to transfer Woodstock Hydro Services Inc.'s distribution licence and rate order to Hydro One Networks Inc., pursuant to section 18 of the act.

The Board has assigned this file Board matter number EB-2014-0213. This application was filed on July 11th, 2014. The School Energy Coalition, the Corporation of the Township of Zorra, and the Concerned Citizens Against the Sale of Woodstock Hydro were granted intervenor status. The Board determined in Procedural Order No. 3 that these applications would proceed by way of oral hearing.

My name is Christine Long, and I will be presiding today. Along with me is my colleague, Ellen Fry.

May I have appearances, please.

# Appearances:

MR. NETTLETON: Good morning, Madam Chair and Ms. Fry. My name is Gordon Nettleton. I appear on behalf of Hydro One Networks Inc. and Hydro One Inc., and with me is my colleague, Héloïse Apestéguy-Reux, and we have no preliminary matters arising this morning.

MS. LONG: Good morning, Mr. Nettleton.

MR. RODGER: Good morning, Madam Chair. Mark Rodger, appearing as counsel for the city of Woodstock and Woodstock Hydro Services Inc.

MS. LONG: Thank you, Mr. Rodger.

MR. SHEPHERD: Jay Shepherd, counsel for School Energy Coalition.

MS. LONG: Mr. Shepherd, good morning.

MR. HARDING: And I'm Michael Harding, from the Concerned Citizens Against the Sale of Woodstock Hydro.

Do I have to press something here?

MS. LONG: We can hear you, Mr. Harding. Good morning.

MR. HARDING: That one? I'm sorry, I'm getting instructions here... Then do what? Oh.

MR. SHEPHERD: It's on.

MR. HARDING: Okay. I'm sorry about that. Anyway, I'm Mike Harding, from the Concerned Citizens of Woodstock.

MS. LONG: Thank you.

MS. HELT: Good morning, Madam Chair, Ms. Fry. My name is Maureen Helt. I'm counsel with the Board, and with me I have Judith Fernandes and David Richmond, both with Board Staff.

# Preliminary Matters:

MS. LONG: Good morning, Ms. Helt.

Now, I understand there are some issues with respect to document production, and I'm advised by Board counsel that, Mr. Harding and Mr. Shepherd, you want to deal with the production of these documents in your cross-examination; is that correct?

MR. SHEPHERD: Madam Chair, with respect to the white paper that I've requested, it will be easier for the Board to make a determination if I lay the groundwork in cross first and then make submissions at that point. So -- and I don't think we'll need it before then.

MS. LONG: All right. And then in the event we were to order production, you would need some time to review it before you continued your cross? Is that --

MR. SHEPHERD: It depends on how extensive it is, but I'm not sure that I'll need a lot of time.

MS. LONG: Okay. Thank you. And Mr. Harding, you've requested some documents as well?

MR. HARDING: Yes, I have, and I would seek the advice of the Panel to understand how it is best or most expedient to introduce a request.

MS. LONG: Okay. Well, I think what we might do -- Mr. Nettleton, Mr. Rodger, do you have a position on this?

MR. NETTLETON: Madam Chair, we were just discussing the fact that there were other documents that were set out in Mr. Shepherd's letter related to the position that Hydro One took in its responses to information requests, particularly the exclusivity agreement and documents related to a confidential schedule, and I didn't hear from my friend as to what he is intending to do with those documents.

MS. LONG: Those are IRs 26 and 27?

MR. NETTLETON: Correct.

MR. SHEPHERD: Madam Chair, I'm going to ask some questions about that stuff during cross. My expectation is that I won't need to see the documents. I think I'll be able to get it out in cross. If turns out that I hit a log jam, I may ask for them then, but I don't think I'm going to have to ask for them.

MS. LONG: Okay. Well, then Mr. Harding, if you don't object, I think we'll follow the same treatment for you that we will for Mr. Shepherd, so what we will do is have you deal with the documents that you want to request at the time that you cross-examine this witness panel.

MR. SHEPHERD: Excellent. I appreciate the advice, thank you.

MS. LONG: Thank you. So Mr. Nettleton, do I understand that you are going to lead your witnesses through a little bit of preliminary examination?

MR. NETTLETON: Yes, Madam Chair, subject to your approval of that.

MS. LONG: Okay. So what we would like to do is have your witness panel affirmed, and then we do have some preliminary questions that we'd like to ask about the relief that you are seeking. Ms. Fry has some questions for you.

MR. NETTLETON: Okay. Thank you, Madam Chair.

Seated beside -- seated as the panel are Mr. Ryan Lee. Mr. Lee is seated closest to you. Mr. Lee is the manager of -- sorry, director of managing -- management accounting and forecast for Hydro One Networks Inc., and seated beside Mr. Lee is Mr. Richard Bertolo. Mr. Bertolo is the director of value growth for Hydro One Networks Inc.

Madam Reporter, I'm wondering if the panel could be sworn.

MS. FRY: All right. Gentlemen, could you please stand up and I'll affirm you.

# HYDRO ONE NETWORKS INC. - PANEL 1

**Richard J. Bertolo; Affirmed.**

**Ryan Lee; Affirmed.**

# Examination-In-Chief by Mr. Nettleton:

MR. NETTLETON: Thank you. Now, panel, I'll ask a few questions to have you adopt the evidence that's been pre-filed in this proceeding. Gentlemen, could you turn to the pre-filed evidence and ensure that you have it before you. That is the pre-filed exhibits of Hydro One Networks Inc. in this proceeding. Do you have those documents before you?

MR. BERTOLO: I do.

MR. NETTLETON: And starting with you, Mr. Bertolo, sir, can you confirm that this evidence was prepared by you or under your direction and control?

MR. BERTOLO: It was.

MR. NETTLETON: Mr. Lee?

MR. LEE: It was.

MR. NETTLETON: Thank you. And Mr. Bertolo, do you have any corrections or revisions to make to any of this evidence?

MR. BERTOLO: I do.

MR. NETTLETON: Could you please direct the Panel to those corrections or revisions?

MR. BERTOLO: In the pre-filed evidence in Exhibit A, tab 2, Schedule 1, page 9, at line 2, the record should read "$181 per customer per year compared to Woodstock -- WHSI cost of 258 per customer per year", not "month".

MR. NETTLETON: Thank you, Mr. Bertolo. Do you have any other revisions or corrections to make?

MR. BERTOLO: I do. Two typos that were found in Board Staff Interrogatory 2, specifically Exhibit I, tab 1, schedule 2, page 3, at line 1. And it should read "tab 2, schedule 1 of EB-2009-0096 and Exhibit A, tab 17, schedule 7", not "17".

MR. NETTLETON: Okay. Thank you.

MR. BERTOLO: I have one more.

MR. NETTLETON: Please proceed.

MR. BERTOLO: In addition, same interrogatory response at page 4, starting at line 1 and ending on line 2, it should read: "Risk management ERM program as described in Exhibit A, tab 13, schedule 1, attachment 1." Not 2.

MR. NETTLETON: Thank you, Mr. Bertolo. Do you have any further revisions or corrections to the evidence?

MR. BERTOLO: No, I do not.

MR. NETTLETON: And, Mr. Lee, do you have any revisions or corrections to make to the evidence?

MR. LEE: I do not.

MR. NETTLETON: And, Mr. Bertolo, starting with you, with these corrections, can you confirm that the evidence, the prefiled evidence in this proceeding is accurate to the best of your knowledge and belief?

MR. BERTOLO: Yes.

MR. NETTLETON: And, Mr. Lee, can you confirm that the evidence is accurate to the best of your knowledge and belief?

MR. LEE: I do.

MR. NETTLETON: Thank you. And, Mr. Bertolo, you are appearing both in your personal capacity and as the policy witness for the company. Can you, in those capacities, adopt that evidence in this proceeding as your evidence of Hydro One and Hydro One Networks Inc. in this proceeding?

MR. BERTOLO: I do.

MR. NETTLETON: Thank you. And, Mr. Lee, can you please adopt the evidence in this proceeding as your evidence?

MR. LEE: I do.

MR. NETTLETON: Thank you. Ms. Fry and Madam Chair, I do have some preliminary examination-in-chief. It's brief. I would like to just walk the witnesses through it a little bit. I think it will be helpful to just put the context of this application forward, subject to your approval.

MS. LONG: Mr. Nettleton, I'd like to ask you one question before you do that. This copy of the share purchase agreement we have, dated the 21st of May, 2014, is that the first recent version? It has not been changed? There have been no amendments to it since the filing back in May? We have the execution version at Exhibit A-31, attachment 6, page 1 of 102. Is that the most current version?

MR. NETTLETON: Mr. Bertolo?

MR. BERTOLO: Yes, it is.

MS. LONG: Yes, it is? Thank you. We'll give you a few minutes to confer on that.

MR. NETTLETON: Could we take that at the break and get back to you? Mr. Rodger's just bringing to my attention some minor change that he was aware of, that I wasn't. I could have that discussion now or I could have it at the morning break.

MR. RODGER: It is not a substantive change, Madam Chair. And I'd have to check to be sure, but yes, it is the definitive agreement. There may have been one place in one of the schedules where there was a reference that should have been on schedule X and it should have been on Y. So other than that kind of editorial correction, there have been no substantial changes.

MS. LONG: No material changes?

MR. RODGER: You have the final agreement, yes.

MS. LONG: Thank you.

Then, Mr. Nettleton, Ms. Fry has a few questions before you lead your witnesses through the...

MS. FRY: To start with, just a little clarification of what you just said. You said one of your witnesses will be testifying both in his personal capacity and as a policy witness. Could you just generally clarify what you mean by that? Very generally?

MR. NETTLETON: Ms. Fry, it is my practice when witnesses adopt evidence, they are adopting evidence both in their personal capacity as testifying before the Board. But also one witness, as part of the panel, is speaking on behalf of policy matters for the company. And in that capacity, that witness is speaking and adopting the evidence as Hydro One's evidence in this proceeding.

MS. FRY: Okay. Thank you. Now, just a couple of things to clarify about your application. So in your application, you were applying for Hydro One Inc. to acquire the shares?

MR. NETTLETON: Yes.

MS. FRY: However, if I look at one of School Energy Coalition's interrogatories, and the responses, it appears to say that, in fact, it wouldn't be Hydro One Inc. that would be acquiring these shares; it would be a numbered company. So can you just clarify who you are applying for permission to acquire these shares? Which corporate entity?

MR. NETTLETON: My understanding of the numbered company, Ms. Fry, is that it is intended as part of the structure of the transaction.

The ultimate owner of the shares would be Hydro One Inc., but for purposes of tax planning, a numbered company is being used. And again, we provided responses to information requests along the lines as to why the numbered company was being used, and the witnesses would be prepared to address that question.

So subject to any clarification that Mr. Bertolo --

MS. FRY: No, I'm not going to ask you the why. I just want to understand what the Board is being asked to approve. Are we being asked to approve simply a transfer to the numbered company, simply a transfer to Hydro One Inc., or some kind of arrangement where there would be an initial interim transfer to the numbered company and a subsequent transfer to Hydro One Inc.? I just want to understand what you're asking for.

MR. NETTLETON: My understanding, and subject to a discussion with the witnesses --

MS. FRY: Okay.

MR. NETTLETON: -- but my understanding, Ms. Fry, is that it is an instantaneous part of the transaction, that a numbered company is being used.

Now, again, I would need to confirm that with --

MS. FRY: So they can testify as to that?

MR. NETTLETON: My understanding is they can.

MS. FRY: Well, I'll ask them about that at the appropriate time.

And the second thing is in your application, you say:

"Hydro One is concurrently filing a notice of proposal under section 80 of the Ontario Energy Board Act for acquiring an interest in a generation facility."

Can you just clarify generally what that refers to?

MR. NETTLETON: Can you point me to the --

MS. FRY: Yes. That would be Exhibit A, tab 1, schedule 1, page 5 of 6.

MR. NETTLETON: I believe, again, that the witnesses would be in the best position to provide further clarification on that point, Ms. Fry, but I believe it's a microFIT contract that the company is planning to enter into. But again, I would be, again, open to the suggestion of having the witnesses speak to that part of the application.

MS. FRY: Okay. They can?

MR. NETTLETON: Yes.

MS. FRY: So you are saying it might be part of this application?

MR. NETTLETON: Again, I would invite you to --

MS. FRY: Okay. I'll ask them. Thank you. Thanks, Madam Chair.

MS. LONG: Mr. Nettleton, if you could lead your witnesses through?

MR. NETTLETON: Good morning, panel. Perhaps to start, Mr. Lee and Mr. Bertolo, could you please introduce yourself and your positions with Hydro One?

MR. LEE: Good morning, Madam Chair and Panel. My name is Ryan Lee. I'm the director of management accounting and reporting.

MR. BERTOLO: Good morning, Madam Chair and Ms. Fry. My name is Richard Bertolo. I'm the director of value growth at Hydro One.

MR. NETTLETON: Gentlemen, have you appeared before the Ontario Energy Board before in the capacity of a witness?

MR. LEE: I was at the technical conference at EB-2013-0416, which is the distribution 2015 to '19 application.

MR. BERTOLO: I have not.

MR. NETTLETON: Mr. Bertolo, perhaps starting with you, could you please briefly describe your education and background?

MR. BERTOLO: I have an undergraduate degree in mathematics from the University of Waterloo and an MBA in international finance from McMaster University.

MR. NETTLETON: How long have you been employed with the company?

MR. BERTOLO: Approximately 29 years.

MR. NETTLETON: Can you briefly describe your employment experience over the course of that period?

MR. BERTOLO: I've had growing levels of responsibility over that prolonged period of time. I started with international programs, including utility acquisitions in South America. I launched the competitive telecommunications company. I developed the first large-scale smart grid fuel deployment in North America on behalf of Hydro One. And in the last few years I've been focusing on consolidation of the distribution sector in Ontario.

MR. NETTLETON: Thank you, Mr. Bertolo. And, Mr. Lee, could you please describe your education and background?

MR. LEE: Sure. I have a bachelor of commerce from University of British Columbia. I also received my chartered accountant designation.

MR. NETTLETON: How long have you been employed with the company?

MR. LEE: I've been with Hydro One for eight years.

MR. NETTLETON: Can you briefly describe some of your employment experience?

MR. LEE: I started my career at Hydro One in the business planning and analysis group, which is responsible for planning and forecasting for Hydro One. And in the past year I've now become the director of management accounting and reporting.

MR. NETTLETON: And, Mr. Bertolo, what areas of responsibility do you have in respect of this proceeding?

MR. BERTOLO: I have responsible for structuring, negotiating and executing the transaction for the purchase of Woodstock Hydro.

MR. NETTLETON: And, Mr. Lee, how about you?

MR. LEE: I will be responsible for management reporting and tracking of results.

MR. NETTLETON: Mr. Bertolo, could you please briefly summarize the proposed transaction for the Panel?

MR. BERTOLO: On May 21st, 2014 the city of Woodstock, as the owner of Woodstock Hydro, entered into the share purchase agreement with Hydro One to sell Woodstock Hydro for an enterprise value of $46.2 million. Hydro One pursued the transaction as part of its consolidation strategy.

To help put context in this strategy, it would be helpful if we refer to a few maps that were in the application. If you can please bring up Exhibit A, tab 3, schedule 1, attachment 3A. This shows the fragmented nature of the distribution sector in Ontario. Municipally-owned utilities are in red, with the exception -- and, sorry, and Hydro One Brampton is in blue, and the yellow notates (sic) previously owned utilities in the province. All the white space is Hydro One's service territory.

If we can go to the next attachment, 3B, this brings us down closer to the Woodstock area and shows Hydro One's Beachville operating centre. It is boarded by London Hydro to the west, to the north is Stratford and Kitchener-Waterloo, to the east you can see Brant County, and to the south there is Tillsonburg.

In the middle of that Beachville operating centre is Woodstock Hydro. It's red, and it's hidden behind the green annotation, which is our field business centre, which is in Beachville and the ops centre, which is just west of Woodstock.

If we can go to attachment C now, it brings you in closer and shows the municipal boundaries of Woodstock. Within the municipal boundaries of Woodstock there is actually two service providers for electricity, Woodstock Hydro in red and Hydro One Networks in yellow.

In the Woodstock -- or in the Hydro One territory in the northwest corner, which is the upper left corner -- that's where some of the residential areas are that Hydro One services -- there are sporadic residential areas throughout the rest of the territory, in addition to mixed industrial that is in there as well.

Now, the key to this, though, is that the history of our operations is both within the municipality and completely surrounding the territory. And it's the contiguous relationship that forms the basis for which Hydro One believes it can achieve efficient utilization of the Woodstock Hydro assets, and when combined with our economies of scale this produces a lower cost structure which will underpin rates in the future.

MR. NETTLETON: Thank you, Mr. Bertolo. And sir, how are the interests of Woodstock's existing customers protected in respect of this transaction?

MR. BERTOLO: In the near term Woodstock Hydro will receive rate certainty, five-year rate freeze following the close of the transaction. In addition, a negative rate rider, if approved, will result in a further 1 percent reduction in the 2014 base delivery rates of Woodstock Hydro ratepayers, and that's frozen for the five-year period.

Also the quality and reliability of distribution services currently experienced by Woodstock ratepayers will be maintained. Hydro One's expectation is that reliability will be similar to current reliability based on Hydro One's operating experience with similarly situated assets in the area.

If we can please turn to Exhibit A, tab 2, Schedule 1, page 14, table 4. This table shows the SAIDI and SAIFI for Woodstock Hydro and comparable Hydro One assets. The Hydro One feeder used to produce these results was from the Hydro One Woodstock East distribution station. It flanks the east side of Woodstock Hydro's service territory. This is a more apples-to-apples comparison when looking at similarly situated assets.

The table shows is that there are similar reliability results for Woodstock Hydro and Hydro One for assets in the immediately adjacent service territory.

MR. NETTLETON: Now, and Mr. Bertolo, how are the interests of Hydro One's existing customers protected in this transaction?

MR. BERTOLO: There is no impact to existing rates. The rate freeze and reduction provided to Woodstock Hydro customers do not come at the expense of Hydro One's existing customers. There is no pass-through of the transaction costs to ratepayers. In addition, Hydro One customers in the long-run will be able to share fixed costs over a larger customer base.

MR. NETTLETON: Mr. Bertolo, let's turn to some of the metrics of the transaction. Sir, did Hydro One pay a premium over rate base in acquiring the shares of Woodstock Hydro Services Inc.?

MR. BERTOLO: Yes, we did. At the time of the transaction the rate base was approximately $32 million, so the premium over the rate base was approximately $14 million.

MR. NETTLETON: Why is the payment of a premium for the acquisition of the shares of Woodstock Hydro in Hydro One's best interest?

MR. BERTOLO: It is normal in a commercial transaction. In a competitive market, premiums for assets are paid for those that can effect economic efficiencies and synergies.

For Hydro One, this transaction advances our strategy of consolidation. Acquiring contiguous service territory, especially embedded utilities, offers tremendous synergies.

Transaction also allows for operational advantages, regarding operational centre rejuvenation and easier transportation access for our fleet of large vehicles.

Transaction also helps alleviate demographic challenges Hydro One is faced with. It allows Hydro One to secure scarce qualified field staff and knowledgeable back-office staff to augment our provincial work force.

MR. NETTLETON: And will ratepayers be responsible for the premium paid?

MR. BERTOLO: No, the premium will not be recovered through rates. Hydro One is taking the risk that efficiency savings achieved will offset the premium. If efficiency savings are less than expected, the premium cost will still not be recovered through rates, nor will it impact any future revenue requirement. Only the net book value of Woodstock's assets plus associated working capital will be included in rate base.

MR. NETTLETON: Now, let's turn to the topic of cost savings and what analysis you've done, sir. How does Hydro One reasonably expect to achieve forecast cost savings?

MR. BERTOLO: Hydro One has existing operations in immediately adjacent area to Woodstock Hydro, as demonstrated by the maps. Operations executed by a regional work force is more efficient than having Woodstock Hydro operate on a stand-alone basis, and when combined with Hydro One's asset risk assessment process and economies of scale, the result is a lower cost structure.

MR. NETTLETON: And what level of cost savings are you expecting to achieve in the five-year period, sir?

MR. BERTOLO: If we can please turn to Exhibit A, tab 2, Schedule 1, page 8, table 2. This table was developed to provide a ten-year overview of OM&A and capital expenditures that could reasonably be expected. The savings are a result of comparing two forecasts. The first is labelled "status quo scenario". This represents no transaction, Woodstock Hydro continuing to operate as it is today. And the second is labelled "Hydro One forecast". This represents a transaction scenario which projects the full integration of Woodstock Hydro operations into Hydro One.

The Woodstock Hydro status quo forecast was developed based on an analysis of Woodstock Hydro's historical expenditures, their budgets and projections, and discussion with Woodstock Hydro management to develop the ten-year forecast.

The Hydro One forecast is based on the quantitative and qualitative combination of both field assessments of asset conditions, combined with analytical assessment of the Woodstock Hydro fleet of assets based on Hydro One's asset risk assessment process.

These assessments underpin the projection of integrating the Woodstock Hydro assets and service territory into Hydro One operations, and the incremental OM&A and capital expenditures are provided in the table.

The table then further provides a sensitivity analysis which varies the Hydro One forecast by plus or minus 20 percent, to provide an overall range of savings. Aggregate savings are expected in all scenarios.

MR. NETTLETON: Okay. Mr. Bertolo, finally, can you please summarize why Hydro One believes this transaction to be in the public interest?

MR. BERTOLO: The transaction will benefit Woodstock Hydro ratepayers via the 1 percent distribution base rate production and a 5-year freeze. Quality and reliability of distribution service will be maintained.

For the staff, there's job continuity, which allows for local knowledge retention, as well as the opportunity for growth both locally and provincially.

The transaction creates operational synergies and economies of scale, which is good for both Woodstock Hydro and Hydro One ratepayers.

The incremental cost of adding 15,000 Woodstock Hydro customers to Hydro One's 1.2 million customer base results in a lower cost structure.

The transaction is consistent with overarching government policy favouring distributor consolidation. Distributor consolidation is necessary to offset costs of implementing more advanced and complex systems to run the grid, and be more adaptable to providing customers with near-real-time information about their electricity consumption and costs.

Hydro One's current ratepayers will not be adversely affected by the transaction, and with the addition of 15,000 customers, allow for fixed costs to be shared over a larger customer base.

So from a price, quality and reliability perspective, we see this transaction as being in the public interest, and will not cause harm to ratepayers.

MR. NETTLETON: Thank you, Mr. Bertolo. Thank you, Panel. This panel is now available for cross-examination.

MS. LONG: Thank you very much. Mr. Harding, are you ready to ask your questions?

MR. HARDING: Thank you. Could I just interrupt for a minute? Do you think I'd be able to make some preliminary comments? This is probably not the time, but sometime during today?

MS. LONG: Yes, you will -- well, I think what we've arranged is that submissions -- so when you actually do your argument -- we're going to do those in writing. I understand that Mr. Nettleton is going to go ahead and do his submissions on behalf of the applicant today, but we're going to allow you and Mr. Shepherd to provide written submissions.

If you want to do a preliminary statement right now about setting the context for your questions, that is fine, but we're not looking at you to do argument right now.

# Cross-Examination by Mr. Harding:

MR. HARDING: Thank you. Yes, I do have a question. The panel makes the comment that regional -- which in effect says that a regional work force will save money. My puzzlement with that is that history seems to dictate otherwise. So where, specifically -- other than the document you just showed, can you provide assurance to the ratepayers of Woodstock that what you say is in fact correct?

MR. BERTOLO: If I could take you to Exhibit A, tab 2, schedule 1, page 6, in our submission we show the anticipated adjustment to staffing levels to serve the Woodstock Hydro service territory.

What this table shows is, on the left side, Woodstock Hydro staffing and salaries in aggregate, and they have 38 staff to service that territory.

With the regional work force and, quite frankly, the provincial work force behind them, all the directs are not necessary because they already exist. So the senior management team is not required because there already is one in existence in Hydro One.

Supervisory staff isn't necessarily required, because it already exists regionally within the region of Woodstock and can be serviced from that.

So what we've done is we see 38 going down to 14, and the 14 are the direct staff required to address those assets because there won't be any incremental staff above that necessary.

So the savings in aggregate on salaries is $1.3 million that's available to offset rates.

MR. HARDING: Then how can you make the claim, since you're gutting this organization by removing all the staff from it except those which you have to keep, and those are unionized employees, make the claim that local knowledge will be retained?

MR. BERTOLO: The direct staff has local knowledge in the field.

MR. HARDING: They have knowledge about the goings-on in the city of Woodstock, which has had this utility for the last 100 years operating out of Beachville? That's your claim?

MR. BERTOLO: The assets are what's important in going forward. As it's absorbed into our operations, what will happen is the local knowledge on the street is what is critical. Processes that Hydro One has in place is the way the utility will be run on a go-forward basis. So the senior staff, I didn't say that they wouldn't be used locally. Some of the management may be placed in positions based out of Beachville, which could be used regionally there. They may take the opportunity to take jobs -- Toronto, Ottawa, Windsor -- wherever the corporation has openings for them, and that knowledge is still available to the corporation.

The key in Woodstock is the assets that are being managed, there are still the direct staff that has the knowledge as to how to work those assets.

MR. HARDING: I'm told that the best predictor of future behaviour is present behaviour, and that's why I raised the issue. Because the folks that have delivered what the shareholder wanted and what the ratepayers wanted was an intimate knowledge of the community, and have grown to expect that. And it sounds like, I guess, from my perspective, that they are about to lose it.

But using that logic, then let's explore another issue, which -- where we have been as a utility. And by the way, I've sat on the utility for almost two terms of -- at the municipality, and so I'm passingly familiar with what goes on in a utility. But let's examine the issue of conservation, if I'm directing that question to the right person. Are you prepared to talk about that?

MR. BERTOLO: I'll try to answer your question.

MR. HARDING: Thank you. There is a statement in Exhibit, page 15 -- and I've forgotten what the tab is and maybe you can help me -- about conservation practices, where you outline what you are committed to.

MR. NETTLETON: Just for the record, Madam Chair, I believe it is Exhibit A, tab 2, schedule 1, page 15.

MS. LONG: Thank you.

MR. HARDING: Can you describe for me what -- and you've been -- there is a high-level understanding, so I need to understand, where the rubber meets the road, what you are really going to do in the city of Woodstock when compared with what Woodstock Hydro's been doing.

Do you have any further thoughts on that?

MR. BERTOLO: Can I take you to your Interrogatory No. 8? So Exhibit I, tab 3, schedule 8.

So in this response, what we attempted to do was show that not only will we take into account current Woodstock Hydro programs that they have and try to rationalize those with the Hydro One programs that are in place -- and the reason for that is simple. There is duplication occurring throughout the province when it comes to CDM and smart grid initiatives. So this just attempts to say that we're going to look at your programs versus our programs and we're going to rationalize those.

In addition, Hydro One is participating in some broader programs to help lead the industry. And we give you two examples in here: social benchmarking and green button pilot.

Both those, Hydro One is part of a smaller group of utilities that is setting the template for the rest of the province.

Woodstock Hydro's customers now, because you will be part of Hydro One, will benefit from the fact that you will be at the leading edge of these programs with us. Those programs will be effected in your service territory as we roll it out throughout the province. So it's additional benefit that Woodstock Hydro has here.

MR. HARDING: I appreciate the promise, but if you take a look at the CDM strategy that's been filed with the Ontario Energy Board, you're going to find that an explanation as to why we greatly exceeded the conservation targets in the province and why you did so poorly, 45 percent.

So what you are promising ratepayers is, in fact, that something good is going to happen in the future, a couple of techie programs, when this utility has been operating at the ground level, doing expos and helping our ratepayers actually make the meaningful change.

The reason why I raise conservation as one of my early issues is because a kilowatt not purchased means a saving to the ratepayers, and quite frankly, the comments that I'm hearing from our constituency is you don't have a good track record.

And so while I appreciate the fact that there is some techie stuff coming, that's what you are committed to, you really don't make, in my opinion, in my reading of this, make any kind of assessment as to what -- why this looked so bad.

Can you at least help me understand, other than these technologies that are coming, why that happened and why Woodstock looks so damn good when it comes to conservation?

MR. BERTOLO: All I can say is Woodstock's done well. They've spent the money. I agree they've spent their energy target dollars. As far as their programs producing results for their customers, that's wonderful.

This is part of the benefit of consolidation in the industry. If their programs are that good, we'll absorb them into ours. That's part of the rationalization process.

MR. HARDING: Well, I have difficulty to see that a less experienced, less -- a company with less performance is, in fact, going to do better by instantly buying the utility.

The other aspect of culture is that we have very deep roots in our community, our staff are very committed and very knowledgeable, and why we have done so well is because they believe that this utility is actually going to help them save money, and that goes back when I first joined the utility, 2004, where we had technologies in place that produced a 15 to 20 percent everyday reduction in energy expenditures, and that continues throughout the history since that time, and I guess I just, to the Panel, have to remain concerned that we lose something that actually saves our ratepayers money today, and that we're not going to have to wait three years down the road to figure out whether you've actually done it.

Is there any guarantee, any penalty, if you don't meet the conservation standards of this utility today?

MR. LEE: So Mr. Harding, maybe I can help you with some of the -- with the numbers that you quoted here. I'm not familiar with the 45 percent. It must have been a snapshot in time. But I can tell with you the annual report that we filed to the Board on September 30th, 2014, that -- and in the executive summary we -- and I quote:

"Based on Hydro One's results to date we expect to achieve 95 to 100 percent of our peak demand target by the end of 2014. However, achieving our peak demand target will depend upon the expected TLU savings determined by the OPA to deliver -- sorry, sorry, to be delivered and the OPA First Nations program delivering the anticipated results. As disclosed in last year's report to the OEB, not including potential energy savings from TLU -- TOU pricing, Hydro One will likely achieve 80 percent of the cumulative energy target."

So I guess what I'm quoting there is that the 45 percent may be a snapshot in time. The CDM program, as my understanding, is that it's a four-year program, so we do expect to achieve a bulk of our targets.

MR. HARDING: That's a promise. Why isn't it built into your application that you are guaranteed, with some penalties, if you don't achieve, so that the folks actually paying the bills like me actually have some assurance?

MR. BERTOLO: It's the oversight of the OPA on these programs, and we comply with what the program is. If that's not a condition of it, then it's not a condition.

MR. HARDING: So that in effect is a loss for the citizens of Woodstock that they no longer have a control and can dictate as shareholder what they expect that utility to do for them. You are only going to meet what is absolutely required; do I hear that correctly?

MR. BERTOLO: Those are your words, sir.

MR. HARDING: And what would your words again be for me?

MR. BERTOLO: With regard to what?

MR. HARDING: A guarantee.

MR. BERTOLO: There is no guarantee in this agreement, in the commercial agreement that was negotiated with the city of Woodstock.

MR. HARDING: And that's your answer. All right.

Let's look at territory then. You brought up a territory map, and largely Blandford-Blenheim and East Zorra-Tavistock, I negotiated those boundary expansions. And I would agree that it is a 40 percent piece of geography. Overnight when we negotiated the deal Woodstock became 40 percent rural.

Tell me the number 0f customers. You talked about geography a lot, but you've never, in any document that I saw, describe the comparator. And we'll talk about comparators later, but how many customers are in that area that completely surrounds Woodstock? Would it be less than 1,000?

MR. BERTOLO: Sorry, you are asking for the Hydro One customers now?

MR. HARDING: Yes, yeah, you know the yellow area where you talked about how encircling was Woodstock Hydro, and --

MR. BERTOLO: I think it's attachment --

MR. HARDING: -- how many customers are in that little piece, which is Woodstock itself?

MR. BERTOLO: Roughly 700.

MR. HARDING: 700 customers. So you are trying to say that whatever knowledge your staff had of this particular area, it is going to apply to 15,000-plus customers of the city of Woodstock. Those are my words.

MR. BERTOLO: Sorry, is there a question, sir?

MR. HARDING: Yeah, yeah, I'm trying to formulate one.

MR. BERTOLO: Oh.

MR. HARDING: That's really two pieces of geography, because what's very interesting is that the Hydro One Networks area to the right of this chart is actually part of Blandford-Blenheim, originally part of Blandford-Blenheim, and would have been under, I suppose, under their licence.

Since that geography is of interest to everybody, what is their rate? What is their rate schedule? Is it R1? R2? Certainly not urban?

MR. BERTOLO: The Hydro One customers within the municipal boundary are R1.

MR. HARDING: R1. And so you could know right today, or could you -- let me frame it as a question: Could you know today what that rate would be upon purchase for -- for the city of Woodstock? What's the rate going to be?

MR. BERTOLO: The rate in -- well, right now --

MR. HARDING: Is it going to be R1, I mean, for the city of Woodstock as well, since it looks like you're blending it together?

MR. BERTOLO: No, sir. With the transaction closing, Woodstock Hydro rates remain in effect, 1 percent down, and a freeze for five years.

MR. HARDING: Okay, let's pause on the 1 percent. What does that work out for the average customer of Woodstock in real money?

MR. BERTOLO: Approximately 31 cents down if you use the OEB calculator on 800 kilowatts.

MR. HARDING: Right, 31 cents. Combine that all together and what do you have? Do you take that 31 cents and say that, well, if it's average, we'll average that, we'll total it by 15,000 customers, et cetera, and we come up with an overall saving? Do you have those figures?

MR. BERTOLO: I don't have that math, sir.

MR. HARDING: The savings are minimal; would you accept that? The rate reduction is minimal.

MR. BERTOLO: I accept the fact that it's actually a savings, as opposed to an increase, which most utilities are experiencing at this time.

MR. HARDING: And did Woodstock expect to negotiate an increase from the previous rate basing to 2014?

MR. BERTOLO: Their current rates -- I don't know off the top from their previous one, but their OM&A costs have gone up materially over the period of time.

MR. HARDING: Mm-hmm. So how do you expect these customers that are sitting on the -- that are in Woodstock, are they going to be blended into a rate schedule or are theirs also fixed?

MR. BERTOLO: As we've articulated in the application, the rate design in year 6 is yet to be determined. There are a number of options that can happen, and as we get closer to that point in time when we have more facts, the rate regime or the rate application will be made in year 6.

MR. HARDING: That's to do with the actual rates, but the rate class. Why will you not answer questions about what rate class, based on what you know since you've done all examination, that Woodstock will be under? Because we can figure out what that yields in today's dollars, even though it's six years from now.

MR. BERTOLO: The rate class hasn't been determined now.

MR. HARDING: Why not?

MR. BERTOLO: Because that's not part of a rate application right now. That will be part of the rate application in year 6.

MR. HARDING: But the Board is -- and I've heard so much comment about what the Board should be doing and what is permitted and not permitted, et cetera, and it's been a real lesson for me, but you can know, it's possible today to understand, how Woodstock would be treated based on the hundreds of other acquisitions you've made? Because it is in the document.

MR. BERTOLO: There are a number of options that we've outlined in the application that -- which will underpin the rate design for year 6. We were clear. There are ones that could be harmonized into the existing rates, as they said, or there will be new rate classes developed. There could be new rate regimes in effect at that time, as prescribed by the OEB.

All that will be taken into account in year 6, to design those rates.

The key point right now is that the cost structures are going down from where they are. And those cost structures is what the Board has indicated is what's required to indicate where rates could be in year 6, but the delineation of the actual rates isn't part of a MAAD application.

MR. HARDING: I suppose it's frustrating, on behalf of the folks, the ratepayers, not to know what the likely damage, long-term, is going to be so that they can arrive at a point of comfort with this sale.

And so I'll leave that matter, but that certainly is of concern to me, that you have enough industry experience to understand what that rate is going to look like and make a commitment. Not explore all the options; you have three options, and we'll decide six years from now whether or not, whatever, you could have done that. But I will move on.

Let's talk about reliability. There is an exhibit here. Can you go back to your exhibit for reliability? I think it's a --

MR. BERTOLO: Exhibit A, tab 2, schedule 1.

MR. HARDING: Schedule 1, page 14, is it?

MR. BERTOLO: Yes, page 14, sorry.

MR. HARDING: Table 4, page 14?

Now, it was a real -- it's good to know that the OEB has a yearbook and publishes lots of stuff. It's very important, because it provides a very high-level who's doing good, who's not doing good, you know, who needs to improve, et cetera.

But my challenge is I can't find these exact numbers for Woodstock Hydro on the 2013 Yearbook. They're different. And in fact, the Board, who has never been consulted, the Board issued another set of data in comparison -- earlier, I'm told -- that doesn't even agree with any of these, neither Hydro One or Woodstock Hydro.

I mean, how does such a thing happen?

MR. NETTLETON: Madam Chair, I don't mean to interrupt my friend, but I think the question that he is posing is: What's the source of the information? Maybe if he asked the witnesses that, as a precursor to the last question, that would help this discussion a little bit.

MR. HARDING: I appreciate the help.

MS. LONG: Can the panel answer that question, the source?

MR. BERTOLO: The source, as footnoted in the bottom of the page, is the OEB Yearbook.

MR. HARDING: Which year?

MR. BERTOLO: For each of those years. And in addition, there's a note that the Woodstock Hydro report in 11 was erroneous. It wasn't corrected in the Yearbook, but Woodstock Hydro corrected it. The number ended up being nonsensical. There were multiples of it, so it was just a misreporting by Woodstock. We received that clarification from Woodstock specifically.

And if I can help, the Hydro One numbers here are the numbers specific to a feeder out of the Woodstock DS. So it runs up the eastern flank of Woodstock.

We do this to try to provide evidence as to operating characteristics for our system as close as possible to the assets which we were acquiring.

The Yearbook only reports system-wide numbers. And we know the challenges with most of Hydro One's reporting when it is system-wide. It takes into account northern Ontario, very rural, the Muskoka areas and the challenges with that. And those numbers really aren't comparable.

So the reason we provide this table is we look at specifics as close as possible to that operating territory. So the Board can take comfort in the fact that the numbers we're showing are the ones -- and these are reported on the same basis on which we make our corporate filing to the OEB in the Yearbook, so it is exact same methodology. And we take that feeder and do the analysis. This is what we're trying to show.

Now, this isn't specifically in Woodstock, but it's close as we can get with actual data that we have. So it's trying to provide a reasonable comparison as to what we can expect in that area with our current operating standards.

MS. LONG: Mr. Bertolo, so where is it if it's not in Woodstock?

MR. BERTOLO: There is a Woodstock -- it's called Woodstock East Distribution Station. It is immediately adjacent to the Woodstock service territory.

If you want to bring back up the map, I can point to it, if that would help. It's attachment C. It's effectively in the corner, just by the 401 in the bottom left corner.

It is in Hydro One's territory, but it's -- if you move the cursor slightly to the right, the distribution station sits in that area, and the feeder runs up along the eastern flank of Woodstock Hydro.

So we use that as the closest one as we can get to being within the municipality and operating characteristics around there, to try to be helpful.

MS. LONG: Thank you. Mr. Harding, back to your questions.

MR. HARDING: Thank you. When was that built?

MR. BERTOLO: The distribution station?

MR. HARDING: Mm-hmm.

MR. BERTOLO: I don't have that offhand.

MR. HARDING: That TS, let me ask a question another way. How many of the -- or do you have any data that would indicate how many of the -- either by duration or frequency, loss is the result of an inability to get energy from Hydro One?

MR. BERTOLO: Those are a different set of numbers. These are excluding those numbers, so it looks at the operating characteristics of the distributor. And if I can help, you said "TS." I wasn't talking about the Commerce Way TS, if that's the one you're thinking about. This is a distribution station, not transmission station, that these results are from.

MR. HARDING: Are we paying -– is the city of Woodstock, Woodstock Hydro, paying any portion of that -- what do you call it? Distribution?

MR. BERTOLO: Sorry, it is Woodstock East Distribution Station. That's different from the Commerce Way Transmission Station.

MR. HARDING: Where does that power get drawn from?

MR. BERTOLO: For the distribution station?

MR. HARDING: Yes, sorry, the distribution station.

MR. BERTOLO: I don't have the single-line diagrams, but a reasonable assumption is that it probably comes out of Commerce Way TS.

MR. HARDING: Then talk about -- there is often terrific resistance to talk about comparators, certainly in what I read in Norfolk, that every time a comparator came up you said: No, no, that's unfair. And it may be unfair. Certainly I understand that it's unfair to look at your entire system operation and use those as comparators. So I really appreciate the attempt to be, quote, in the "vicinity of the city," because that is as close to a comparator we're ever going to get.

So that distribution centre, you are saying the data out of that distribution centre is, in fact -- I need to hear it again -- what you refer to in table 4 as the "vicinity of the city"?

MR. BERTOLO: Yes.

MR. HARDING: Good. So does that distribution centre have a relationship with the yellow area on the map that's currently before us?

MR. BERTOLO: Yes. It services the Hydro One territory.

MR. HARDING: Would it service a territory to the right of that chart, the Blandford-Blenheim?

MR. BERTOLO: I'm not sure if it feeds all that other territory.

MR. HARDING: I would expect it would do that, because you are so close. We sort of -- this system was built long before I came along, and I'm the one that produced that boundary expansion, brought it to my council in order to house Toyota. Great victory for us.

So I think that that's probably a -- I'm just trying to get some comfort with what is in the vicinity of the city, because for me that is an adequate comparator, with one exception: density. That's rural. All this is largely rural, with the exception of Toyota, is largely rural and very small, 800 across that whole area.

So you must understand that from my perspective to compare a largely rural, small number of customers with the city of Woodstock with a terrific density -- what is it, about 500 customers per kilometre, I think -- creates some confusion on my part.

I suppose that's a statement, not a question. But why will it take -- you make a statement on -- I'll move on a little bit -- you make a statement in 6.9 about service quality and service levels. And I've forgotten what the exhibit is. I think it's your service agreement. I failed to write that down. My apologies.

MS. LONG: Mr. Bertolo, do you know what Mr. Harding is referring to?

MR. BERTOLO: I think he is going to the share purchase agreement, clause 6.9, which is Exhibit A-3-1, attachment 6, page 34.

MS. LONG: Okay. I can find it. I just want to make sure you know what you are answering a question on.

MR. BERTOLO: I'm assuming. We'll wait until we see it.

MR. HARDING: There's three savings here, A, B, and C. We are already doing well as a Hydro utility. Why will it take you three years to, according to this -- and correct me if I'm wrong, please -- that your reliable metrics -- reliability metrics should be measured three years out? Is that a correct reading of that statement in A?

MR. BERTOLO: So if I can help with this part, actually, it is to the benefit of the vendor. The reason it was done this way was it takes time to integrate the operations.

So as we stated, we're going to have local staff retained, so all that knowledge is retained there. The concern is after it's been integrated into our operations will the reliability stay the same? Well, it takes time to integrate, so the idea of after the three years is then it's fully ensconced within Hydro One's system. Therefore, the real comparator -- because if we did it the day after you'd get the same reading as Woodstock Hydro, so the premise is once you get beyond the period of integration then you can do the reading to see, did the integration truly deliver the results similar to what they had.

So the first one is after closing, because that, quite frankly, is the field staff, which, it is just a matter of operating methodology. For B they are looking at after integration, because that's customer service, so that's really the back-office systems really kicking into place, so it is a different point in time for that one.

MR. HARDING: You left out C, which is of particular concern. We won't know -- my reading of this is we won't know how good a job you're doing until we do this kind of snapshot three years out. And C is interesting because if we don't meet it we'll pay you $200,000 penalty once.

I'm wondering -- and this was one of the things that people just were puzzled by. I've got to say they're puzzled by it -- because I would have thought in bargaining that every time you don't meet it there should be a penalty. Every time I get a ticket on the highway, I should pay the penalty, not just once.

So it would seem to me that you have given yourself some incredible relief by only paying $200,000 once and never having to go back to it. This was an attempt here to provide a penalty. It is not a big enough penalty, but how do you -- you don't see this as odd? One time only?

MR. NETTLETON: Madam Chair, with respect, I'm just a little concerned of my friend's questions and whether we're getting into an area that is trying to explore the whys. I heard a lot of words in his preamble that suggested he was interested in the whys of the negotiation and whether the why of a $200,000 payment is in the best interests or reasonable.

I'm concerned and cautioning my friend that I will be objecting if we are getting into an area that's talking about the negotiation of this transaction. My friend is free to ask questions relating to the results of the transaction or the effect of the transaction, including section 6.9(c), but I do object to questions that are relating to the rationale in the negotiation that led up to that conclusion.

MS. LONG: I understand your point, Mr. Nettleton. I understood Mr. Harding's concern to be that perhaps a one-time payment was not in the benefit of customers with respect to reliability, and that was his concern, not that he was venturing into how this agreement was negotiated, which would be beyond the scope of what he can ask questions on.

But Mr. Harding, you are kind of bordering on argument here --

MR. HARDING: I guess I'm sitting on the fence on this one --

MS. LONG: -- so to the extent that you can direct questions to the panel that they can answer, that would be helpful to the Board.

MR. HARDING: In answer to my friend, I would say that ratepayers are the kind of folks -- Woodstock is the kind of folks that want certainty, are for certainty. When they evaluate any option, anything, it is about certainty.

So here guarantees, ratepayer guarantees, reduction in loss of harm for the ratepayer, to keep it honest, in the same way, I would say, in the same way that the ratepayers through their shareholder have negotiated what are the priorities for Woodstock Hydro to serve its ratepayers in its community.

I just have to say -- and perhaps we'll have to move on, because maybe there is no answer -- it doesn't seem to be much of a saving or much of protection for the ratepayers to have a one-time penalty. I would be open to some kind of further explanation, put a different kind of context on it, but that's how I see it.

MR. BERTOLO: So a couple points. If you notice in clause 6.3 there is an advisory committee that was struck which provides oversight for the city with regard to Hydro. That is specifically to deal with Hydro One.

Governing Hydro One's distribution licence is the Ontario Energy Board, who provides oversight into all matters with regard to meeting quality levels of service provided by distributors.

So the good folks of Woodstock have the OEB to provide oversight into Hydro One meeting its obligations with regard to the distribution code, just as it does now with Woodstock Hydro operating independently.

The advisory committee is an additional piece where the city, through its negotiation of the transaction, secured the right to have direct relations with senior managers of Hydro One and ongoing dialogue to make sure the integration happens as smoothly as possible for them.

MR. HARDING: I appreciate the response, and I'll be speaking to that in -- later on.

I want to raise the issue now, if I may, about the documents. There has been a lot of exchange of correspondence back and forth, and I suppose I should have taken more offence to -- I want to get it before me -- Mr. Rodger's last letter, I believe, in which he says that "I am only involved in this matter for personal, political ambitions."

And I want to ensure the Panel -- that was on -- let me get the date -- October this 24th. That was the Friday before the election on the 27th. And I thought that was a very interesting response.

I want to assure the Board that I am here on behalf of the 650-plus ratepayers who are petitioning to actually -- who are saying they don't like this deal. Often they don't know why they don't like the deal, but I'm here as a ratepayer, and I'm here even as a former employee of Woodstock Hydro Services, and that it's interesting how the public treated this sale, because --

MS. LONG: Mr. Harding, I would like to deal with the documents that you are looking for, if I can just direct you. Is it your January 13th letter? Does that encompass the four documents? That's the latest?

MR. HARDING: That's right. That's right.

MS. LONG: That brings us up to where we are with respect to documents you are looking for?

MR. HARDING: I am, because --

MS. LONG: It would just be convenient if we dealt with those now, because I think we will take our morning break after I hear from everybody on these documents. And then we may be able to make a decision, and you can move on with the rest of your questions.

So if you could take us to -- I have your January 13th letter in front of me here. And if you could, perhaps, go through the four documents that you were looking for and provide your reasons to us?

MR. HARDING: Overall, my interest in these documents and the public need to show these documents is precisely because the board of Woodstock Hydro had the fiduciary obligation and the duty of care to that entity, and, as far as I've been able to determine, were never consulted meaningfully in the development of this deal. And that the shareholder assumed fiduciary responsibility and duty of care, which I personally find very confusing.

So each of these speak to that. They are -- these are concerns that the board has in doing its duty of care, and contain, I believe, vital elements that can help us understand this agreement in both positive and negative terms.

But this is the group, not the shareholder -- as I say, again -- that has a fiduciary obligation, the duty of care, which anybody in any corporation should understand.

And so I've been able to determine the description that we have here as best as I can, but I want the release of the content, especially when Ross McMillan is still the CEO of the utility. And that the utility -- that the shareholder then fired all the board people and put in staff to govern the services company, and by doing that now made the utility a department of city.

So there has been some terrible stuff happening, in my opinion, but I want to know what this Board was saying to the shareholder and why it may or may not have been acted upon. Thank you.

MS. LONG: So, Mr. Shepherd, you want -- the only document on here that you are interested in, as I understand it, is appendix A?

MR. SHEPHERD: Yes.

MS. LONG: And you want to deal with that in your cross-examination?

MR. SHEPHERD: I would prefer to. I do wish to make supporting submissions with respect to the other documents.

MS. LONG: Okay. So you're going to make your argument with respect to appendix A during your cross-examination, so I'm wondering if we could deal with that document at the time.

And to the extent, Mr. Harding, that maybe you have more submissions on that, we -- I don't want to do this twice, so perhaps we can deal with the other three documents first. I'll hear from Mr. Shepherd next, and then, Mr. Nettleton, on your points on the following three documents.

MR. SHEPHERD: Madam Chair, if it's easier for the Board, I could spend three or four minutes asking questions of these witnesses now to set the groundwork for the first document, which is the key document, I think. And then I could make my submissions on that now.

MS. LONG: If you are willing to do that, that would probably be helpful to us.

MR. NETTLETON: Madam Chair, I'm going to object to that proposal, on the simple basis that these witnesses have never seen appendix A. It was appendix A -- and I made that point clear to Mr. Shepherd in my letter of response to his. And the simple point is that it's a document that is an attachment to a letter that Mr. McMillan, the present CEO of Woodstock -- so I'm not sure how helpful any cross-examination by Mr. Shepherd or Mr. Harding to this Panel could be when this Panel has never seen the document that's the subject of this -- of this issue.

MS. LONG: Well, I mean, that may be true, but we have to deal with this request for this document. So to the extent that the witnesses have no information, I expect that that's what they will say, and I expect that you will make some argument after Mr. Shepherd makes his argument.

But I think what he's trying to do is put this in context for the Panel, to understand how it is that this document deals with who what we have to decide in this application, the no-harm test. And I would benefit from hearing how it is that this comes within the realm of what we need to consider.

MR. NETTLETON: I'm happy to have Mr. Shepherd explain why it is relevant to this proceeding. Perhaps I misunderstood him. I thought he was intending to ask questions to the panel about this document to put it in context.

And my simple point is I've advised Mr. Shepherd in advance of this proceeding that Hydro One has not seen this document. We don't have -- he requested the document from Hydro One. We don't have it, and so therefore this panel can't answer any questions about it.

MS. LONG: Mr. Shepherd?

MR. SHEPHERD: Madam Chair, actually my first question was going to be: Have you seen the document? And I was anticipating that they were going to say: No, we haven't. And then I was going to ask: Well, do you have a witness who has, because the -- because WHSI, which prepared the document, is, in fact, an applicant in this proceeding, and the president is, in fact, the author of the document. And the named contact person for WHSI, the applicant, Mr. Creery, in fact was one of the people copied on the document.

And those witnesses, as I understand it -- although I've requested Mr. Creery be here, my understanding is that counsel has determined that he would not be here. So therefore, I guess, part my argument is -- the reason why I wanted to ask the witnesses have you seen it is because part of my argument is the applicants can't just not bring witnesses and say: Well, now, we don't know anything. The applicants are supposed to ensure that they bring witnesses that are informed about the issues.

And if we've raised an issue about this document, then they should have a witness here to speak to it. And if they don't, that's on them.

So our view is that, in fact, you should presume that the document is antithetical to their case, because if it was supporting their case they'd have a witness here to say: Yes, it is. But instead they are saying: No, Board, not only should you not see it, but we're not even going to bring any witness from this applicant -- none -- nobody available to even talk about it, so that we can legitimately say nobody in the room knows anything about it. We haven't seen it, even though the applicant prepared it.

So the question is: How is it relevant and material? I think the answer is, if you can go to our compendium -- and maybe we should give this an exhibit number.

MS. HELT: Yes. I believe the Panel has a copy of the School Energy Coalition compendium on the dais for each of you.

MS. LONG: We do.

MS. HELT: That will be Exhibit K1.

MR. SHEPHERD: I think the CVs were marked as K1.

MS. HELT: Were the CVs marked? I'm sorry.

MR. SHEPHERD: They weren't in the hearing, but the document that I got already has K1 on it.

MS. HELT: This will be K2, and we'll note that the CVs, then, are K1.

EXHIBIT NO. K1: WITNESS PANEL CVs.

EXHIBIT NO. K2: SEC CROSS-EXAMINATION COMPENDIUM.

MR. SHEPHERD: And if you go to page 2 of that, this is a letter to my friend Mr. Harding from the city of Woodstock, saying: We're disclosing these things you asked for. And one of these things he asked for was this letter of November 5th from Mr. McMillan, the then-president and current president and CEO or the applicant Woodstock Hydro, in which he refers to two documents, two attachments. First attachment is called a "white paper," and the second, appendix B, is called -- is a report from a number of utilities, basically talking about how bad an idea it is for efficient mid-size utilities to be forced to consolidate.

So attached to this disclosure is the report of the mid-size utilities, which is it clearly -- the subject matter of that is this is going to hurt the ratepayers if you force this sort of consolidation.

Therefore my presumption -- and I haven't seen the white paper, so I don't know what it says, but the white paper is described as:

"An information source to provide the shareholder with an assortment of information pertinent to the negotiations with Hydro One."

So my assumption is that that information is: This is how it is going to harm the ratepayers.

This is the -- we've done an analysis, and we've concluded that the ratepayers will be harmed in these ways. It may talk about reliability or customer service. It may talk about Hydro One's well-known problems with their billing system. It may talk about future rates and how much more the people in Blandford-Blenheim next door pay than the people in the city of Woodstock. This is information that deals directly with the question, I believe, of whether the ratepayers will be harmed.

Now, the advantage to this is that it was written by the -- by senior management of Woodstock -- Woodstock Hydro and approved by the board of directors, and they would have had access to the data room that we asked for. All that information, that additional information, that's their information, so they have full access to all the information that my friend Mr. Nettleton doesn't want you to see. And they've then reached some conclusions and provided information to the shareholder.

I don't frankly care what their advice was on negotiations. Negotiations are done. There's an agreement. I do care if they did an analysis of how this would harm the ratepayers, because that is directly what this Board is considering in this proceeding.

And so my friend Mr. Nettleton says they don't know anything about it. The witnesses don't know anything about it. I think you have to presume, given the context of where this document was prepared, that it talks about harm to the ratepayers. And if that's the case, I think you have to see it.

Those are our submissions.

MS. LONG: Ms. Helt, is Board Staff taking a position on this?

MS. HELT: Madam Chair, perhaps I can just say that, with respect to the submission of Mr. Shepherd, he has acknowledged that if it relates to negotiations it's certainly something that's outside of the scope of the no-harm test, and that's been articulated in previous Board proceedings.

I think Mr. Shepherd's comment with respect to the failure to produce should lead the Board to presume that it is in some way antithetical to the case is not necessarily an appropriate position.

I don't think that the Board need draw that conclusion by failure to produce this document, that it in any way then suggests that the information contained in the report is, in some way, indicative of the -- that there would be harm to Woodstock.

With respect to whether or not there is an analysis of the transaction such that it would inform the Board with respect to if there would be harm to ratepayers in the future, there is certainly the Norfolk decision, which talks about rates and rate impact that is to be considered at the time of rebasing after the five years, and the evidence so far has been that the rate impact to the Woodstock customers will be a reduction of 1 percent and a freeze of that for a five-year period.

So, you know, in part I agree with Mr. Shepherd that if you have not seen the white paper it's not possible to know what is included in the white paper, and if there may be some relevant information in that document, that may be of assistance to the Board if it does, in fact, relate to matters outside of just simply negotiation matters, as I believe Mr. Shepherd described the document at first, saying it's an assortment of information pertinent to negotiation, but if it goes beyond that, then it may be relevant to the Board.

MS. LONG: Thank you.

Mr. Nettleton.

MR. NETTLETON: Yes. Madam Chair, Panel, I think there is really two issues here. The first issue relates to the question of production of the white paper. The second issue is who is in the best position to speak to that document.

So let me deal with the first issue, and let me take you to Mr. Shepherd's compendium and a letter that he's referred to dated November 6th -- or, sorry, November 5th, 2014. Just so that we're clear, the context that Mr. Shepherd himself is bringing forward that this document relates to, Mr. MacMillan's letter says, in the second sentence:

"The white paper has been prepared as a confidential information source in aim to provide the shareholder..."

The shareholder being Woodstock Hydro's shareholder.

"... with an assortment of information pertinent to the exclusive negotiations currently underway with Hydro One with respect to Woodstock Hydro Holdings Inc. and Woodstock Hydro Services Inc."

This is a letter from Woodstock Hydro. It would be bizarre, to say the least, that you would expect a counter-party, a party that you're negotiating with, to have any knowledge about what the other party's negotiation strategy is with respect to the transaction. That's the facts here.

It is a matter by definition, on the clearest of terms of this letter, to be for the benefit of the counter-party in this proceeding to inform the shareholder about the negotiations that are currently underway.

So firstly, Hydro One can't speak to this document; it is not Hydro One's document. But more importantly, it is a document that is on the face of the record a document prepared in contemplation of negotiations.

So again, even if was a Hydro One document, which it's not, the context here is in the process of negotiations, so I fail to see how this document is relevant on the clearest of terms of the Norfolk decision that has stated that matters of conduct and matters of the process leading up to it -- a transaction are outside the scope of MAAD proceedings.

So that's the first point. That's the first observation. The second observation is with respect to the -- who can speak to it, who can speak to this document, and Mr. Shepherd's position that Woodstock Hydro should be here, someone from Woodstock Hydro should be here, well, with due respect, it is the applicant's obligation to put forward their case, and it is the applicant that has the choice and the obligation to choose which witnesses that they wish to have appear to speak to the evidence before this Board.

We've made that choice. We've made that choice with respect to the panel that's seated here before you. This panel can speak to the matters related to the effect of the transaction.

The effect of the transaction in this case is with respect to rates and rate impacts and how this transaction meets the no-harm test. That's why we have who we have here before you.

Mr. Shepherd could have taken steps well before now. If he really thought that there was some need to have a Woodstock Hydro employee here, he could have taken steps to follow Board practice and its rules with respect to subpoenaing a witness. He chose not to do that.

And it's something that has been live -- it hasn't just come out today -- it's been something live ruminating about through correspondence well before now. He has chosen not to do that, and frankly, I don't understand why not. If it is so important to him, we should have had that discussion and not use this Board's time now for this discussion.

So those are my submissions. I would suggest that my friend Mr. Rodger, who is counsel to Woodstock Hydro, might have some words too.

MS. LONG: Thank you.

MR. RODGER: Thank you, Madam Chair.

I filed the letter with all the parties and the Board yesterday afternoon on this issue in response to Mr. Shepherd and Mr. Harding's correspondence. I hope the Board has that. I have extra copies --

MS. LONG: We do.

MR. RODGER: -- if you need it. And as my friend Mr. Nettleton has said, the only issue here with respect to this document is whether it is relevant or not. And as Mr. Nettleton has pointed out, it is clear on the face of what we did produce that this goes directly to the negotiations that went on with Hydro One.

You will note the date of Mr. MacMillan's letter was November 5th. Well, that's six months before the share purchase agreement was signed.

As Mr. Nettleton has pointed out, it is clear that the paper was from the Board and the management as a "confidential information source" to the shareholder, the municipality, to deal with negotiations.

And you can imagine -- and as I say this in my letter, Madam Chair, years ago when the province restructured this sector and it transferred municipal electric utilities to local distribution companies, it made the municipalities the shareholders, and the province said, This is your asset. You are going to run it like a business. You are going to pay tax, you're going to earn a profit, and you can keep it or sell it or merge it.

Just like any shareholder, whether it is a municipality or a private-sector investor or the province of Ontario as a shareholder, it's got to be able to have free and frank discussions with its board and with its staff on its assets and how it may dispose of its property.

And so these -- this report and these discussions were never intended to be public information. They were intended to be information about the negotiations between a business and its shareholder. And you can imagine the logical extension. You know, so we have the Drummond report, we have the task force on change, and now we have the Ed Clark panel about optimizing provincial assets, including Hydro One. And you can be sure that the province of Ontario is talking about Hydro One, as a shareholder in its business, on potential options. So it would be the same kind of request.

Well, we think all that information between the province and its shareholders should be public. This is exactly why the Board, in the combined decision and in Norfolk, said the exact opposite. And I don't think I need to take you through those two decisions, but I can if you like.

And they basically said, as Mr. Nettleton has said, is that what's important is the transaction actually before the Board, not what -- not what led up to it, not what could have been. It is the agreement that a willing buyer and a willing seller have come to terms with and have put before this Board. That's what the no-harm test is applicable to.

As for Mr. Creery, Mr. Nettleton is quite right. It is not the intervenors' job to dictate who is going to be the witness on this application. The no-harm test is a prospective looking test. It is what happens after the transaction closes. And the best party and the only party to deal with that is the acquirer, not the seller.

We already know what the impact's going to be on Hydro One -- or on Woodstock Hydro customers. It's going to be this reduction in costs, which has already been talked about, and this immediate distribution rate reduction.

So for all these reasons, we are not going to produce this information, and it is just not relevant, given the Board's clear rulings in the Norfolk case and in the combined proceeding decision.

MS. LONG: Mr. Rodger, is your argument that it is not relevant or that it's confidential? You highlighted for us that this is confidential information, so are you arguing that this is confidential information and it shouldn't be produced?

MR. RODGER: Well, I think it's both. I think fundamentally it is irrelevant to the Board's test, so why would the Board order irrelevant information where it's clearly said in past decisions that it's not going to deal with that type of information?

The information is also confidential because it deals with commercial issues and negotiation issues.

Mr. Harding has raised the point that this comes up because he has made a freedom of information request on these and we're in the appeal process, but -- and I don't want to go into those submissions because, as I spell out in my letter yesterday, those submissions of Woodstock, they're not compellable in any other proceeding in any event.

But they are highly sensitive and they would do nothing to contribute to the test before you, and we think they are prejudicial, overall, to Woodstock.

MS. LONG: I don't want to deal with the submissions on the Freedom of Information Act issue; I want to deal with this document, appendix A here. And I guess my question to you is, Mr. Rodger, I don't know what this document is. You seem to have a different idea of -- and Mr. Shepherd, of what it may contain, and this Panel hasn't seen it so we don't know what it is.

Does it deal solely with negotiations, or is this a memo that may set out issues with respect to how customers may be harmed by this transaction? We are operating here in a bit of a vacuum, and we don't have a witness from Woodstock that we can ask about what this document contains. So the Board is in a bit of a difficult position, in that we're being asked whether a document we've never seen is relevant.

MR. RODGER: But you know from the cover letter of November 5th what it's about. It is assortment of information about -- prepared as a confidential information source with respect to the exclusive negotiations. So my view is it doesn't matter what it may cover or may not. It all deals with the process leading up to the application before the Board. It all deals with negotiations. And the Board has been absolutely clear that that information is not relevant.

MR. SHEPHERD: Madam Chair, can I --

MR. RODGER: What's important is the actual application before the Board, and that is the deal upon which the no-harm test will be applied, not on what could have been or what should have been or what may have been. We've gone through that with other decisions, and the Board's been very clear on it. It is not relevant to the application of the no-harm test.

MR. SHEPHERD: May I ask a question, Madam Chair?

MS. LONG: Yes.

MR. SHEPHERD: Has Mr. Rodger seen the document? He speaks as if he knows what's in it. Why doesn't he tell us what's in it if he's seen it?

MR. RODGER: Again, it is not relevant.

MR. SHEPHERD: It's a straightforward question.

MR. RODGER: If you go to the -- and this is the Norfolk decision on the motion on page 5:

"As indicated in the combined proceeding, the Board also considers that the conduct or motivations of the seller leading up to the consolidation transaction are not relevant to the no-harm test. The no-harm test looks at the effect of a transaction, not the reason or the process preceding the transaction."

The Board could not have been clearer on this issue. So from my point of view, it doesn't matter what's in a particular document. If it deals with negotiations, if deals with that lead-up to the package that is before the Board, it is not relevant and therefore it's not appropriate to produce.

MS. LONG: Given the time, I think that we may break for now and deal with the other three documents.

MR. SHEPHERD: Madam Chair, I would like to reply.

MS. LONG: Okay, Mr. Shepherd.

MR. SHEPHERD: I will only be a couple of minutes.

MS. LONG: Well, let's do reply first. And also, Mr. Harding, how long do you think you would be on the other three documents? Do you have a time estimate?

MR. HARDING: From my point of view? Ten minutes.

MS. LONG: Okay. We'll deal with this document and we'll take the break.

MR. SHEPHERD: Thank you, Madam Chair. My friends made two points. The first is that the document is -- relates to negotiations, because that's what it says. And what the Board decided in Norfolk is that negotiating strategy is not relevant. The Board did not say if the document talks about negotiating strategy, everything in it is irrelevant. That would be silly.

So if the document -- if a document, for example, has an analysis of reliability degradation that is likely to occur after a transaction, that's relevant. And it doesn't matter whether the same document also talks about negotiating strategy.

The reason I think that there are things like that in it -- and of course, you know, we gave Mr. Rodger the opportunity to say he's seen it and he has declined to answer. So it appears that nobody in the room has seen it, which means that my friends are asking you, blindly, to decide that you don't want to see something that you don't -- that nobody can tell you what's in it.

The reason we think that there is stuff about the customers in it is because the second document specifically -- and if you take a look at page 3 of our compendium, I will read the second-last sentence:

"The consensus report -–" that is, the second document –- "challenges certain assumptions and offers tangible alternatives that focus on the best interests of the electricity customer. Our conclusion is that..."

I may have to continue after the break after all.

MS. LONG: That's fine. Why don't we break for ten minutes? Mr. Shepherd, you can take some time. We'll hear the remainder of your reply, and then we'll take another longer break.

Thank you.

### --- Recess taken at 11:13 a.m.

### --- On resuming at 11:33 a.m.

MS. LONG: Please be seated. Mr. Shepherd, would you like to continue with your reply?

MR. SHEPHERD: Yes, I apologize, Madam Chair.

My first point was this document is not just relevant to the negotiations. It appears to also -- on the face of the record it appears to also be related to the best interests of the customer, and indeed, part and parcel of that is unless you see it you don't know. At least the Board has to see it. You can't blindly say, Well, nobody's seen it, so let's assume that it's not relevant. If there is at least some indication that it's relevant, then I think at least the Board has to see it to determine whether it is.

The second point is my friend again referred to the willing buyer and willing seller argument, and I just want to point out SEC Interrogatory No. 24, Exhibit I, tab 2, schedule 24, in which we asked, What do you mean by that? And they were very clear that that doesn't mean that anybody was trying to protect the ratepayers. It is only about commercial reasonableness. Willing buyer and willing seller has nothing to do with anybody protecting the ratepayers.

So then my third point, which is, I think -- I'm actually surprised that it was raised -- is my friend says, The applicant decides who their witnesses are. Well, actually, no, that's wrong. The Board decides who they need to hear. The Board defers to the applicant to allow them the freedom to present their case, but in the end the Board decides, We need to hear this person or this person, and they make that decision.

Then my friend Mr. Rodger goes on to say, Well... I think it was Mr. Rodger, said, Well, why didn't you subpoena these people? The last time somebody was subpoenaed that I can remember in a case like this was in 2007. The Board doesn't normally operate in that way, and certainly, had I tried to subpoena one of their officers or directors, they would have been less than pleased. I won't use the -- I won't use the phrase I was going to use.

So that's not normally how it's done. Normally you ask you them to bring a witness that you know is going to be relevant and will be helpful to the Board and the Board decides who they want to hear from.

Anyway, I don't think that matters, but I think that both those suggestions that they decide who the witnesses are and that we should be subpoenaing people are just wrong. And those are our submissions.

MS. LONG: Thank you, Mr. Shepherd.

The Panel has decided that what we are going to do next is hear argument on the next three documents on Mr. Harding's list, so we can hear submissions on all the documents and then we will, depending upon the time, take a break to determine what our decision is on all four of the documents.

So Mr. Harding, referring to your January 13th letter, your second bullet, you're requesting a letter, an attachment, dated February the 10th from Mr. MacMillan. If you could explain to us why it is that you need that document.

MR. HARDING: It seems that each flows from the other. I want to point out to the Panel that from my conversations in the past with Board members, the frustration they had in terms of dealing -- of not being involved in the negotiations, so I find it a weak argument that this is negotiation strategy which is nothing to do -- they weren't involved.

So this -- the second bullet point flows from the first bullet point, so they are hinged together, in my opinion. During -- the third bullet, "new person introduced", was because the CEO had a -- had --

MS. LONG: I'm sorry, Mr. Harding, are you moving on to your third bullet?

MR. HARDING: Yeah.

MS. LONG: Let's deal with your second bullet first. I think --

MR. HARDING: Oh, okay. Sorry, sorry --

MS. LONG: -- Mr. Shepherd might want to say something, and then Mr. Nettleton will probably want to say something.

MR. HARDING: Okay.

MR. SHEPHERD: My comment is a simple one. It appears to be related to the white paper. If the white paper is something you need to see, then I think the correspondence related to it, if it adds more information, you need to see as well at least to assess whether there is some information relating to harm to the customers in it.

MS. LONG: Thank you. Ms. Helt, do you have any comments on this document?

MR. HELT: Madam Chair, I just echo what was said previously with respect to the white paper. If -- no one has seen the document, so we are not able to say whether or not it just relates to negotiations or if it provides something in addition, so if it does in fact relate to matters outside of negotiation, it may be relevant.

MS. LONG: Thank you.

Mr. Nettleton, Mr. Rodger?

MR. NETTLETON: Madam Chair, I have nothing further to add in respect to the comments from Hydro One's position.

MS. LONG: Thank you.

MR. RODGER: Madam Chair, the rationale from hearing Mr. Harding and Mr. Shepherd is it's now even expanded further to the conduct of the seller. And again, if the Board were now to order such documents, you would basically be turning the combined decision in Norfolk on its head.

Just to give you two cites from the combined decision -- and I just want to read a short passage from that on page 8. The Board clearly decided in that case:

"As a general matter, the conduct of the seller generally, including the extent of its due diligence, or the degree of public consultation in relation to the transaction, would not be issues for the Board on share acquisition or amalgamation applications under 86 of the act. Based on the no-harm test the question for the Board is neither why nor the how of the proposed transaction."

And then later on page 9 -- and this gets into some of the, really what are governance issues that Mr. Harding has raised, halfway through the page on page 9 the Board talks about how the legislature have set all these utilities up as OBCA corporations, and the Board goes on to say:

"The OBCA contains provisions governing procedures and rights associated with, among other things, amalgamations and other significant corporate activities. Viewed from this perspective, the Board does not believe it is appropriate to open up corporate process issues to review. The Board does not believe it is appropriate to add an additional layer of corporate review by vesting process rights..."

Again in the sense of rights associated with the process:

"...leading up to the conclusion of a transaction within customers of distribution companies. The content of such rights and the process by which they may be exercised is beyond the Board's objectives or role within the energy sector."

So as I say, this is a critical issue in the consolidation -- ongoing consolidation of the sector. And in fact, if you were to order production of such information, it would in fact be a break on consolidation, because every shareholder, every management, and every board of directors would say, We can't have a free discussion about any issue that may lead up to a deal because it may be before a hearing. And that is directly against government policy, in my view, Madam Chair, and I think there would be a lot of other LDCs and shareholders in the province that would like to have input on that.

Also, Mr. Harding talks about his discussions with board members. It begs the question, and I ask it through you, Madam Chair, is that, where is Mr. Harding getting this information? How is he even describing these documents? Because they are confidential.

So if these -- if Mr. Harding is getting these documents leaked somehow, that is not a legitimate basis on which and try to go on a fishing expedition at this process.

So I would ask him. These are confidential board materials. Where does he get the descriptions from? How did he even know to make a freedom-of-information request?

That's why we're concerned that -- and Mr. Harding referred to an earlier letter, but, you know, it is clear that Mr. Harding does not like this transaction and will never like it and in our view is using any means he can to try and raise an issue where none exists, and this is part of it.

So the Board should not be part of this kind of fishing expedition, particularly in view of the decisions that you've already made, because it impacts the whole industry, and really it is the same submissions for all these other items.

So I agree with Mr. Harding that one flows out of the other, but this is a foundational issue in my view, Madam Chair.

MS. LONG: Thank you, Mr. Rodger.

Mr. Harding, do you have any reply to that?

MR. HARDING: It is interesting, Mr. Rodger's comment, how would I even know that these exist? An interesting thing is that when you do an FOI request that is broad enough in a municipality that basically said, Send me copies of every exchange between the board, as I knew it then, and the city, that's how I discovered these documents. And I know that our friends have said that, you know: Why didn't he do it earlier? He should have known this. Well, we'll take six months to actually finally see those documents, and that's how I discovered them.

And one can always have conversations with board members. This is a publicly owned company and they exist today. And one can say -- without disclosing the confidential nature of it, to describe an item, which is what is done here.

So the -- what has remained interesting is something that is innocuous receives so much heat.

Now, I'm just a ratepayer. I'm not a professional. This is the first time I've done this. And in fact, rarely have I ever done an FOI request. Even -- and when I was head, you know, I dealt with them, because you had a bias to release. There've got to be real, substantial reasons as to why. These are not substantial reasons. So it piques my interest, as to, A, why they don't want to release it, and what is in it that is so different, so special that it would create a negative environment. So my response to Mr. Rodger is: Show us. Thank you.

MS. LONG: Thank you. Mr. Shepherd, do you have any reply?

MR. SHEPHERD: I have only one comment. My friend says that this will create a break on consolidation, because shareholders and their boards of directors will not be able to have a free discussion. So what he's saying, then, is that a board of directors of a utility can conclude that a transaction is harmful to the ratepayers and keep that conclusion and their rationale secret from the Board.

If he thinks that's the law and if he thinks that's what this Board's policy is, I beg to disagree.

MR. RODGER: Madam Chair, if I may respond to that, the test is applied to the evidence that's actually before the Board. That is the deal that has been concluded, and it is on that evidence -- again, not what could have been, should have been, may have been. It's not on speculation.

You have a transaction before the Board. You have a complete record.

I think what Mr. Harding and perhaps others still struggle with -- notwithstanding how many years we have had of restructuring -- is that under the Energy Competition Act, these local utilities became private businesses. Yes, they're owned by a municipal shareholder, but these are commercial transactions and there has to be confidentiality between the owner and its property.

And that is the issue. And that's why the Board in the decisions that I've cited say we don't need to hear any of that or see it, because we're dealing with a transaction and the transaction has to satisfy the test on its own merits.

So that's why it's important, and that's why Mr. Shepherd, I believe, is wrong. Every other municipal shareholder in the province would be concerned if, now all of a sudden, after the combined decision and after Norfolk, when we had certainty and certainty confirmed, if all of a sudden a memo goes out and says: Geez, your board of directors, you can't have a free and frank discussion anymore, because whatever you say may come up in an OEB hearing, even though it had nothing, necessarily, to do with what is actually before the Board.

So there really is a foundational principle here that will be look looked at by the industry very carefully. And as I say, I think the practical effect is just to reverse the combined decision and Norfolk, and that is the opposite of the regulatory certainty which this Board wants to promote and which the industry needs, particularly in light of what could be ahead with the Clark report and others.

MS. LONG: Mr. Rodger, I'm going to ask you a question. Did you ever contemplate, when these documents were asked for, that you might produce them to the Board to make a determination as to whether or not they were relevant?

MR. RODGER: It was not considered, because we have had the combined decision. So, you know, when I meet with boards of directors, Woodstock and others, I take them through the Board decision. And yes, the process is not relevant, so these matters would be protected.

MS. LONG: I guess what I'm going asking you about these four documents here, we seem to be in a bit of a quagmire here, in that the Panel is struggling with we're not sure what the documents say. Are they strictly with respect to negotiations, which would be outside what we want to consider? Or do they bring us into the test because they talk about impact on customers?

We have no way of knowing because we have not seen the document. We don't have a witness who can answer the question as to who has seen the document.

So did you ever contemplate that perhaps those four documents could come before this Panel and we would make a determination as to whether or not they were relevant?

MR. RODGER: No, in light of the combined decision, it was never envisioned that these would be part of a case, because what the Board focuses on is the actual concluded transaction. And that's when you look at ratepayer impacts and all the other relevant issues, cost reductions and so on.

MS. LONG: Thank you. I think we have everyone's position on this document.

So the third document is a letter from a Ms. Carswell, dated June 6, 2014.

Mr. Harding, if you want to make submissions on that document?

MR. HARDING: Yes. So that one comes at a time when the CEO was in hospital and the board was again talking about issues that it had established in the white paper. And it's a follow-up to that, because they now, for the first time, see the share purchase agreement, which causes them to produce this and a subsequent letter as well when -- well, it's the fourth bullet point, but just -- I'm -- I feel compelled to say to the Board that I'm not -- the intricacies of legislation and commitment, et cetera, are probably going over my head, but I'm also aware of the Norfolk decision, that you decided about how confidential documents, described as confidential, would be treated.

And I'm of the opinion, if I recall correctly, that you said: We should have a bias that's to keep documents, relevant documents, out in the public, and this one. So without knowing what the content of this is, I think it is relevant.

MS. FRY: Just a question of clarification, Mr. Harding. So in your letter of January 13th, you are saying only that this letter is believed to report errors and omissions and so on, sort of following the receipt of the share purchase agreement. You are saying that you think it also relates to information that impacted the sale, along the same lines as you believe is in attachment 1; is that correct?

MR. HARDING: Yes. That's correct.

MS. FRY: Where does this information come from? Are you saying it comes from feedback from your freedom of information request?

MR. HARDING: This one was not on my FOI request. It came from a board member, who said: Look it, you've got to get a hold of this letter. And I said: Well, I can't.

And that's where the description comes from. Remember, these were board members trying to communicate with the shareholder and this was the only means open to them.

MS. LONG: So, Mr. Harding, does your position change if -- we heard from the witness this morning that the May 21st, 2014 share purchase agreement is the definitive agreement and that there have been no changes; there are no errors and omissions or questions, because the agreement that the Board has before it is the deal represented in paper form?

MR. HARDING: I have made such a statement, that it is full and final. It's complete. And we just heard that it was complete, that it hasn't changed except for some minor revisions. So I guess I don't know what I'm being asked.

MS. LONG: Well, I guess it feeds off the point that Ms. Fry said, is it is your contention that this letter -- even though the description here says it is with respect errors and omissions with respect to the share purchase agreement -- it is your belief that that's not the only thing the letter contains. There is something in there.

MR. HARDING: I wouldn't know. That's the whole point. I mean, I'm describing something, aren't I, in the dark. So I didn't and wouldn't ask a board member to disclose something that was board work, but it's hard for them to keep silent -- let me put it that way -- and so I don't know how to respond to that question. I just don't know how.

MS. LONG: Mr. Shepherd?

MR. SHEPHERD: The one comment I would make is my friend Mr. Rodger appears to be trying to expand the notion of relevance or the irrelevance of the process to create some sort of cone of silence over everything that happens prior to the agreement being signed or approved or whatever, and everything that happens before that, doesn't matter whether it relates to harm to the ratepayers, this Board can't see. We disagree.

In the case of these two particular documents, they are actually after the agreement was signed, and if they talk about implications of the agreement to the ratepayers, then even under my friend Mr. Rodger's cone-of-silence argument they would still be fair game.

Those are my submissions.

MS. LONG: Does Board Staff have any submissions on this document?

MS. HELT: I would simply state, in looking at the description of these two particular documents, one thing I would like to remark on, Madam Chair, and you yourself referred to it, there has been evidence already provided today by the witnesses with respect to the share purchase agreement that has been put before this Panel as being the final report -- or the final agreement.

And so a description of a document which states it believes to report errors and omissions when we have evidence already on the record in this proceeding to indicate it is the final report, I don't see that this document is necessarily going to be something that's relevant.

Now, Mr. Harding did say there may be something else in there, same with the letter of June the 6th. However, there is nothing really that I have heard from Mr. Harding to support that there may be something in there that is of relevance.

So I guess my position is that, unlike the first two documents, where there has been some argument given as to why they may, in fact, deal with matters other than just negotiations, which the Norfolk decision says is not of interest in the no-harm test, these two documents, I don't see that there has been a persuasive argument put forth that they may relate to something that would be of interest to the Board in considering whether or not the acquisition is in the public interest or not and meets the no-harm test.

MS. LONG: Thank you.

Mr. Nettleton, Mr. Rodger?

MR. NETTLETON: Thank you, Madam Chair.

My remarks are this: I think that my friend Ms. Helt has taken the right approach, that you have to first ask yourself the basis upon which this disclosure is being asked. And the basis of that disclosure is what's found in this letter.

What's found in this letter is a description that says it is believed that errors and omissions and questions stemming from the receipt of the share purchase agreement is what's relevant, but the evidence on this record is now very clear, that the form of the share purchase agreement that you have before you is the executed version. That's what the evidence is. That's what is found in Exhibit A-3-1, attachment 6, and at page 48 there are executed signatures of that agreement.

I would observe, Madam Chair, that for that reason there is no basis, unless it's this Board's determination that it suddenly is relevant, to start looking at prior versions, obviously, of drafts of agreements that were probably circulated between the parties where comments were provided that all led up to the execution and copy of the agreement.

And with all due respect, I don't think that's right. I think that we all know the precedents that have been set both in the combined proceeding and in the Norfolk proceeding that have said we're not -- that's not relevant. That's not what the purpose of MAAD proceedings are for. It is not to look at the conduct or the intention of the parties or whether the transaction could have been improved. It is about the result of the transaction that's before you.

So in similar light, I would suggest, Madam Chair, that the same approach be taken with respect to the first bullet point. That's the point. The point is, look at what the basis upon which the disclosure is being based on.

And at point 1, if you take the same point, you should be looking at the letter, the letter dated November 8th, and the only evidence that you have before you is the description that is found there in that letter that says:

"The white paper has been prepared as a confidential information source aimed to provide the shareholder with an assortment of information pertinent to the exclusive negotiations."

It couldn't be clearer.

So my point is it strikes me that if my friend Ms. Helt is right that item 3 should be excluded, so too should item 1, because of the same reasons, and they are the right reasons. It is the right philosophy: What is the basis upon which you have before you to support a disclosure request? And in both -- actually, all instances, it all relates to the time period and information that led up to the transaction, not following the transaction.

Those are my submissions.

MR. RODGER: Madam Chair, I support Mr. Nettleton's comments, and I would just add that the latest discussion just shows exactly the risks and kind of the murky waters we're into.

It was interesting that Mr. Harding, when he said he got the information for this bullet point about the share purchase agreement, that it came from a director.

Well, as he said earlier on, directors are under an obligation of fiduciary duty. They have confidential information. They shouldn't have been disclosing those details to Mr. Harding to start with. So that's the basis of this.

Mr. Harding was also -- I'm glad he acknowledged that basically he's in the dark and this is strictly a fishing expedition. He doesn't like the transaction, and again he's -- he'll try to pursue any action to get information which may attempt to try and put the transaction in a less than -- negative light.

So this is just asking the Board to facilitate a fishing expedition.

I would also add, just around confidentially more broadly, that the Board also has to remember that while the share purchase agreement, yes, it's signed, it's binding, but it is conditional on OEB approval.

And if the Board, for whatever reason, on any of these MAAD applications were not going to give approval, then the parties look at it, and in this case potential that Hydro One could walk away, or Hydro One could say, Well, let's take another crack at it, and maybe we need to renegotiate a few things.

Well, if they've got some information that they should never have in terms of confidential discussions between the Board, if that is now public, then that's going to prejudice the city of Woodstock's position in the event that an agreement would have to be modified somehow.

So that's what I said earlier. There is some bigger issues in play here that really have to be thought through which will impact every LDC that contemplates a transaction.

MS. LONG: Mr. Harding, do you have any reply?

MR. HARDING: Only that I would ask the Board to consider, and I know you will, the effect on ratepayers, people that pay their bills.

The other point I want to make is that hiding behind the Ontario Business Corporations Act in this matter, in this public process, and for these publicly owned entities, is not appropriate. Thank you.

MS. LONG: Mr. Shepherd?

MR. SHEPHERD: You've been very patient in listening to us repeat our arguments over and over again. I have nothing to add.

MS. LONG: Thank you, so I believe the last document is the June 6th letter from Mr. MacMillan, including Board minutes from June 4th, 2014.

So Mr. Harding, if you had any final submissions on that we'd like to hear them now.

MR. HARDING: I believe this was when the -- if memory serves, and I would have to look it up at this point. This is the day that -- two days after the board was fired, and I'm just curious, that's all.

Yes, and it may be offensive to our friends opposite, but, you know, there is a lot of people that just want to know what was going on. That's my only comment.

MR. RODGER: Well, I might be able to put --

MS. LONG: I'm sorry, Mr. Rodger. I just want to make --

MR. RODGER: Oh, I'm sorry.

MS. LONG: -- sure the record is clear, so Mr. Shepherd, you have no comment on that. Mr. Nettleton.

MR. NETTLETON: No comment.

MS. LONG: So Mr. Rodger, we come to you.

MR. RODGER: Well, I might be able to put Mr. Harding at ease on this point. I know he's said it a few times.

The board of directors was not fired. The board was not fired. At the last general annual meeting -- that's when directors are elected -- new directors were put in place, and it was in the context of this transaction that there's going to be a transitional period between the filing of the application and the closing, and the shareholder decided to put in, primarily, staff to deal with that.

So Mr. Harding is just wrong. The board of directors was not fired.

MS. LONG: Thank you. And, Ms. Helt, I had forgot to ask you if you had any comment on the --

MS. HELT: No further comment, Madam Chair. Thank you.

MS. LONG: So, Mr. Harding, do you have any reply?

MR. HARDING: One final thing. And we can go back and forth. It's like a cruel ping pong game here on these matters. But by "fired" I mean these are the very people that spent 14 years of their lives building up Woodstock Hydro as an asset that is highly prized by the community. And to simply have those replaced by people who have no -- zero regulatory responsibility, and are, in fact, staff of the utility, it is just bothersome. So my apologies to the Board for belabouring this issue, but you can obviously see that it is sensitive for both Mr. Rodger and myself.

MS. LONG: Thank you. What we are going to do now is take a break and come to our decision with respect to the four documents. So I expect that we will need some time, but I am cognizant of scheduling for this afternoon. So I think we'll try and take 20 minutes, so that should give people some time to take a break, but it is not going to be our lunch break because we'd like to deal with the documents prior to lunch so we can schedule the afternoon accordingly.

So we will take a longer break for the lunch hour later on.

So we would ask perhaps you can touch base with Ms. Helt around 12:30 and see if we've come to our decision by then. Thank you.

MR. NETTLETON: Madam Chair, just before we break, I can advise the Board that we will be able to speak to Ms. Fry's question regarding the section 80 notice. I can speak to that at the appropriate time when we reconvene.

MS. LONG: That would be helpful. Thank you.

### --- Recess taken at 12:06 p.m.

### --- On resuming at 12:55 p.m.

# DECISION

MS. LONG: The Board's task in considering a MAAD application is the no-harm test. This test was first set out in the combined proceeding and recently discussed in the Norfolk decision.

The Board has determined that the factors to be considered in deciding such applications are the Board's five objectives, as set out in the Ontario Energy Board Act.

The impact of the transaction on customers is relevant to the Board's consideration under the no-harm test. Conduct of the negotiations, due diligence of the parties, public consultation, and the internal corporate review processes are not part of the Board's consideration in this type of application.

We will deal with each of the documents, in turn, by referring to the January 13th, 2015 letter of Mr. Harding.

With respect to documents 1 and 2, appendix A to the letter of Mr. MacMillan, president and CEO of Woodstock Hydro dated November 25th, 2013 and supplementary correspondence dated February 10th, 2014, the Panel is unable to determine definitively from the description provided whether these documents are relevant in assessing the impact of the transaction on customers.

There was no witness available from Woodstock Hydro to answer the Board's questions with respect to the contents of these documents. The Board, therefore, finds it necessary to order production of the two documents in order to determine whether the documents, in whole or in part, are relevant to the matters before it.

Concerning the third and fourth documents, based on the information before us, the Panel is not convinced that these documents are likely to contain a significant amount of information that is relevant.

Concerning the third document, the Panel notes that the Hydro One witnesses confirmed that the May 21st, 2014 version of the share purchase agreement is the final version.

The Board is cognizant of the confidentiality concerns raised by Mr. Rodger in respect of the information contained in those documents. The Board therefore requires that the documents will be provided to the Panel, and we will make a determination as to their relevance.

That is our decision.

Mr. Rodger, do you have those two documents available?

MR. RODGER: No, I don't have them with me today, Madam Chair. And actually, I'm going to need instructions about this decision. Could I suggest that we proceed, and at the break I will attempt to get instructions?

MR. SHEPHERD: Madam Chair, my friend Mr. Rodger was asked, in writing, to bring these to this hearing because we knew that there would be an issue and the Board might decide to have them produced. He had ample time to get instructions because he was asked, and he should have brought them with him.

To not have them here, knowing that the Board might ask for them to be produced, is in effect to either prejudice us in our cross-examination or to delay this proceeding. That's not appropriate.

MR. RODGER: Mr. Shepherd and Mr. Harding should have brought a proper motion if they really wanted this issue to be front and centre. It was -- a request for information is not the appropriate way to proceed as Mr. Shepherd and Mr. Harding has done, and we gave our answer yesterday to these issues so that it was an entirely appropriate response given the correspondence from my friends.

MS. LONG: Well, we find ourself in a position where the Panel would like to review these documents, so what I am going to suggest is that we take our luncheon break now, Mr. Rodger. You can speak to your client and see if you can get some instruction and report back to us, and that will determine how we proceed for the rest of the day.

So Mr. Shepherd?

MR. SHEPHERD: Can I ask one question? Madam Chair, if the Panel is going to determine relevance, are you going to be seeking submissions on relevance? Because if you are, my friend will be able to see the documents and we will not. I'm happy to sign a declaration and undertaking so that I can see it to make submissions, but if the Panel's decision is that only the Panel will see it, which I understand, if that's the case, then I think that you then can't take submissions on relevance, because we would be prejudiced.

MS. LONG: Well, I think what our decision is is that we will be determining relevance, the Panel, so it will not be Mr. Harding or you that will be determining relevance; it will be the Panel.

MR. SHEPHERD: No, sorry, if you are asking for submissions from any parties on relevance before you make that determination, then we would be prejudiced.

MS. LONG: Right.

MR. SHEPHERD: If you're not, I would be okay.

MS. LONG: Right. We are not. We are not.

So we will break now for an hour. We will come back at 2:00 and, depending what instruction you have, Mr. Rodger, we will see how we continue for the rest of the day. Thank you.

### --- Luncheon recess at 1:00 p.m.

### --- Upon resuming at 2:17 p.m.

MS. LONG: Mr. Rodger, when we left for our lunch break, you were going to try and get instructions from your client. Have you got that?

MR. RODGER: Thank you, Madam Chair. Yes, I do have instructions that I would like to advise the Board on, please.

So, Madam Chair, in accordance with the Board's ruling, we are filing the two documents that the Board has ordered to be provided to the Panel for your review, to determine relevance with respect to the no-harm test.

I think you will see that both documents were prepared in contemplation of negotiations underway with Hydro One.

In the first package, the November 5th, 2013 letter, you'll see five --

MR. SHEPHERD: I'm sorry, Madam Chair. I'm going to object to this. As I raised before the break, if we don't get to see it, Mr. Rodger doesn't get to make submissions on relevance.

MS. LONG: Are you making submissions or you're just describing what the documents are to me?

MR. RODGER: I thought it might be helpful to describe for the parties at a high level that both -- the point is this, that both sets of issues -- they are both letters -- clearly go to the issue of negotiations.

We are producing them for you for your determination.

MS. LONG: Well, I don't want you to stray into submissions here, because I've told Mr. Shepherd he can't make any, and Mr. Harding can't make any because he can't see the documents. So the Panel will review them and we'll make a determination as to relevance. The documents should speak for themselves.

MR. RODGER: Yes. And I wasn't going to go beyond that, Madam Chair.

I will just say finally, though, that my instructions also are, in producing these documents, that should the Board decide that they are relevant to the no-harm test in whole or in part, that my clients be afforded adequate time to seek a review or appeal of the Board's decision, or to pursue any other legal remedy available. And on that basis I'll hand over these documents, Madam Chair.

MS. LONG: Thank you.

Board counsel, because they these are only coming to the Panel, is there any way that we need to mark these? Or we should just make note in the transcript that they should be provided to the Panel?

MS. HELT: I think at this stage -- it's a unique situation, Panel. I do not think it needs to be marked as an exhibit, and -- however, I do think if there is appropriate reference in the transcript, that's adequate.

MS. LONG: Okay. Thank you.

So I want to be clear, Mr. Rodger, on what your position is.

If, in the event that this Panel determines that these documents in whole or in part are relevant to this proceeding, then you want to have the right to be able to appeal our decision?

MR. RODGER: Yes, or review. And I really I think I have to wait to see what the decision is of the Panel before I can say definitively, but those are my instructions, that we are handing those over but it doesn't preclude us from bringing an action to review thereafter.

MS. LONG: Does anyone else have any comments on that? Mr. Harding, Mr. Shepherd, Board Staff?

MR. SHEPHERD: Madam Chair, we think that in the event that my friend wishes to appeal, that the Board should give him the opportunity to do so because it wouldn't hurt to have -- if he wants to go to court, it wouldn't hurt to have a court rule on this if that's what he wants. This is not the last time this is going to come up, and so might as well get it resolved and nailed right down. And obviously there has to be a delay of the proceeding anyway at some point, because -- unless the Board decides in the next 20 minutes that nobody should see anything.

And as long as that's the case, as long as there is likely to be a delay, then it seems to me it makes some sense to give him the opportunity to appeal if he wants to.

MS. HELT: Madam Chair, the only thing I would ask for clarification from Mr. Rodger, perhaps, is if he is seeking a motion to review in the event that the Panel determines the documents to be relevant, you are -- I take it you are also seeking a stay, then, of the Panel's decision?

MR. RODGER: That's correct.

MS. HELT: All right. And then it would be up to the Panel to decide at that point how to deal with the stay request, in particular, because, as I'm sure everyone's aware, a Board order is not automatically stayed, and there would have to be, then, submissions on that particular point.

MS. LONG: Thank you. Mr. Nettleton?

MR. NETTLETON: Thank you. Madam Chair, I think perhaps the point on stay would be dealt with by Hydro One seeking an adjournment of the proceeding, pending the outcome of any motion that Mr. Rodger makes regarding the production decision, if there is one. But I have instructions, Madam Chair, to support, or indeed make a motion for adjournment of this proceeding if there is an order seeking production.

We -- my client is very concerned with the decision. There's far-reaching implications to it, not in this proceeding but in other transactions. And I think that's the point that Mr. Shepherd is raising with respect to the production of this sort of information on a go-forward basis.

MS. LONG: Thank you, Mr. Nettleton. Thank you. So we are going to take these documents and review them. As everyone in this room knows, the applicant does have the opportunity to file a motion to review, and we will deal with that at that time.

With respect to the rest of the day and how we're going to treat that, Mr. Harding, are you -- you've completed your cross-examination; do I understand that correctly?

MR. HARDING: Yes, I have.

MS. LONG: You have? Okay. And now obviously we are not going to have time to refer these documents right now. We had expected that we might be able to do that over the lunch break, but we've received them now. So, Mr. Shepherd, do you have a preference as to splitting your cross?

MR. SHEPHERD: My guess is that the main topics of my cross will be covered in these documents. And the -- if I split the cross, it just makes it a lot longer. It would be better to put it all together. Because I'd have to deal with an issue and then come back and deal with it again with this document. That's not really --

MS. LONG: Well, if this document is relevant.

MR. SHEPHERD: Assuming it's relevant.

MS. LONG: These documents may not be relevant.

MR. SHEPHERD: So my preference would be to do it all at once after the Board has made a determination on whether to require this to be produced.

MR. NETTLETON: Madam Chair, if I may, two points. I do have a procedural matter to help Ms. Fry and her question.

MS. LONG: We're going to get to that.

MR. NETTLETON: So we can get to that. A less contentious issue, I might add. But with respect to Mr. Shepherd's submissions just now, I find it curious that he would suggest that his -- the brunt of his cross-examination is dependent upon the production of this document. It was Mr. Harding's letter that requested the production of this document. I believe Mr. Shepherd had the opportunity to raise this point as well in his letter to me. He was aware of the circumstance. At no time prior to or in that letter did he say that the brunt of his cross-examination would be dependent upon the production of this document, so I find it odd that we're now at a point where we can't proceed at all with this proceeding and finish at least part of the cross that he has. So I am just -- I make that observation.

MR. SHEPHERD: Madam Chair, I did ask for the document and I asked for it before Mr. Harding did. That's number one. Number two, I haven't said that I can't cross. I can cross, for sure. I have a cross prepared. I'm trying to avoid the duplicative nature, where I do two hours of cross today and then I do another two hours of cross based on this document covering the same ground. How is that useful to the Board? It's better to do one set all at once, with all the evidence on each issue in front of us.

That's all I'm suggesting.

If the Board wants me to go ahead today, I'll do it, but I don't want my friend to say: Well, you've already covered all those issues in your first go-round, because the second go-round, it will probably be all the same issues.

I'm just trying to be efficient.

MS. LONG: No, I understand that. And I understand your point, Mr. Nettleton. We have two hours in front of us, and we're trying to make the best decision on how to expeditiously get this matter heard.

So Mr. Nettleton, why don't you go to the two questions that Ms. Fry has asked you. If you can deal with that, and then we will come to a determination as to how we'll proceed beyond that.

MR. NETTLETON: Well, in typical Canadian fashion, I can compromise. I don't have much to say with respect to the numbered-company issue. I'll leave that to the witnesses to address in their testimony and any questions that you have, but with respect to your reference to page 5 of Exhibit A, tab 1, schedule 1, which was the reference to Hydro One concurrently filing a notice of proposal under section 80 of the Ontario Energy Board Act for acquiring an interest in a generation facility, I can advise Ms. Fry that that statement was made in the application document because it arose out of the Board's form of application for section 86 applications.

As you will see at Exhibit A, tab 3, schedule 1, page 1 of 17, where question 1.1.2 asks notice -- under section 80 or 81 of the act, is a notice of proposal required under section 80 or 81 of the act, and Hydro One selected yes.

And so the reason why it was selecting yes was because there is a microFIT generation facility owned by Woodstock Hydro Services Inc., and that's part of the property that is owned by the entity in which the shares of -- that Hydro One is acquiring the shares of.

Now, that notice, Ms. Fry, was filed with the Board on -- before July 30th, 2014, and in fact it was July 14th, 2014, and on July 30th, 2014 the Board wrote to Hydro One, Ms. Erin Henderson, and noted that the notice of proposal relates to the purchase of a microFIT contract for a solar photovoltaic microFIT generation facility, and the letter states that:

"This letter is to inform you that the Board does not intend to issue a notice of review of the proposal."

It was issued a separate proceeding number, EB-2014-0239.

So a long explanation, I'm sorry for that, but the reason for it appearing in the application was because it was part of the requirements, and that particular requirement, the notice of proposal has been filed and dispensed with by the Board on a separate notice basis and through a separate proceeding.

MS. FRY: So just to confirm, what you are saying is in your view there is no need to deal with that in this proceeding.

MR. NETTLETON: Correct.

MS. FRY: Thank you.

MS. LONG: So Mr. Nettleton, what we're going to -- Ms. Fry is going to ask your witness the question with respect to the numbered company.

MR. NETTLETON: Yes.

# Questions by the Board:

MS. FRY: Okay, gentlemen. So this is an application for a corporate entity to get permission to buy the shares of Woodstock, so I just want to know what corporate entity would be buying the shares, and therefore, what is our approval to be given for.

MR. BERTOLO: So Hydro One is utilizing a numbered company in concert with Hydro One Inc. to buy the shares, and the reason for that is because of the holding structure arrangement which Woodstock Hydro has, and the numbered company is being utilized for tax efficiency so that when we do the amalgamation we'll be amalgamating the numbered company into Hydro One Inc. and the operations parts will be amalgamated into Hydro One Networks on an operation basis.

MS. FRY: So just so I'm clear on the mechanics, I think what I'm hearing is the shares would initially be transferred to the numbered company if you get the Board's approval, but then the numbered company would be merged with Hydro One Inc. Is that what you're saying?

MR. BERTOLO: It will be utilized in that. I'm not sure if it's merged exactly, whether it's wound up into it. That's a tax move I'm not sure about.

MS. FRY: Okay. Maybe I'm using the wrong terminology, so after whatever that operation is, would it be the numbered company or would it be Hydro One Inc. that would hold the shares?

MR. BERTOLO: Hydro One Inc.

MS. FRY: Okay. Thank you.

MS. LONG: Mr. Shepherd, we're going to ask that you proceed today, with the caveats that we understand that should these documents ultimately ever form part of the discussion that there may be some need for you to retrace ground, but we would like to use the time that we have available to us.

So if you could begin your cross-examination, that would be helpful to the Panel.

MR. SHEPHERD: Thank you, Madam Chair.

# Cross-Examination by Mr. Shepherd:

MR. SHEPHERD: I want to start by just following up. By the way, I am Jay Shepherd. I represent the School Energy Coalition. I don't think I've met either of you before.

And so my first question is, I want to follow up just on what Ms. Fry had to say. You are asking the Board to approve a transfer to a numbered company of the shares of the holding company, right? Then a transfer by the utility to what is then its sister company, Hydro One Networks, of the assets, right? And then -- is that right?

MR. BERTOLO: That is an interim step.

MR. SHEPHERD: And then a winding up of the numbered company into Hydro One Inc., not Networks, but Inc., so that you can get a bump for tax purposes of the cost base. But when you do that wind-up, that will no longer be a utility, because the assets will have already been transferred to Hydro One Networks; is that right? Or is it the other way around?

MR. BERTOLO: Let me try it my way, if it would help. So there is a holding company with Woodstock, and then the operation company below it. Hydro One needs to have an interim company that can be merged with the holding company of Woodstock Hydro to leave the operations separately. The two holding companies and numbered company will be merged together --

MR. SHEPHERD: Okay. So, sorry, let me just stop you. So numbered company and holdco will amalgamate, a vertical amalgamation, and that company will then own the utility; is that right?

MR. BERTOLO: Yes.

MR. SHEPHERD: Okay.

MR. BERTOLO: And then there is also -- we have to take into account the fact that -- so, sorry, you're correct, and at that point there are wind-up steps at which the shares get bumped up to fair market value, and therefore it allows for tax efficiency.

MR. SHEPHERD: Yes, so the combined -- the amalgamated holding company and numbered company is wound up under section 88 of the Income Tax Act into Hydro One Inc., and because of that the shares of the utility are bumped up to the amount you paid for the holding company; isn't that right?

MR. BERTOLO: Correct.

MR. SHEPHERD: Now, so is that being done when it's a utility or after the transfer of the assets? The reason I ask is because if it's not a utility any more the Board doesn't need to care, but if it still has the utility assets then the Board does need to ensure that that's covered in its order.

MR. BERTOLO: The subtlety of that step I'm not aware of.

MR. SHEPHERD: So I guess I'm going to ask if you can undertake to provide those details so that we can figure it out. I don't need your -- I only need to know that particular question. Is it -- at the time that those transactions take place, do those companies still own the utility, or is it after the transfer of the assets? So if you could undertake to provide that, that would be useful.

MR. NETTLETON: Madam Chair, we will undertake to answer that question.

MS. LONG: Thank you.

MS. HELT: We will note that as Undertaking J1.

UNDERTAKING NO. J1: TO ADVISE WHETHER AT THE TIME THE TRANSACTIONS TAKE PLACE THE COMPANIES STILL OWN THE UTILITY OR WHETHER IT OCCURS AFTER THE TRANSFER OF ASSETS

MR. SHEPHERD: I'm shocked that we got to 20 to 3:00 with no undertakings.

So -- okay. I want to then ask you a couple of -- if I can find my cross notes. So I looked at your CVs to understand that normally we have people who are more directly involved in regulatory aspects of the -- of Hydro One involved in these proceedings. And so it appeared to me -- and tell me whether this is right -- that, Mr. Bertolo, your background is really telecom, mostly telecom, although it's been mostly for OPG and Hydro -- or for Ontario Hydro and Hydro One, right? Most of your background is telecom?

MR. BERTOLO: That's only seven of the 29 years that I've been associated with a utility.

MR. SHEPHERD: Oh, okay. And do you know anything about rates?

MR. BERTOLO: I'm not a rate expert.

MR. SHEPHERD: But if I ask you questions about the rates that will be charged or are charged now and are going to be charged in the future, you can handle those?

MR. BERTOLO: I'll attempt to.

MR. SHEPHERD: And you don't live in Woodstock, right?

MR. BERTOLO: No, I do not.

MR. SHEPHERD: You've been there?

MR. BERTOLO: Yes, I have.

MR. SHEPHERD: The dairy capital of the world. Is it the world or Canada?

MR. HARDING: Capital of Canada. Not the world yet.

MR. SHEPHERD: That's pending?

Now, Mr. Lee, your background is more in high tech companies until you joined Hydro One, but you are a finance guy, right?

MR. LEE: Correct. My I background is reporting and business planning.

MR. SHEPHERD: Were you directly involved in the Woodstock deal, as -- you know, like, Mr. Bertolo, actually you negotiated it, right? You negotiated this deal?

MR. BERTOLO: That's correct.

MR. SHEPHERD: Were you involved at all, Mr. Lee?

MR. LEE: Not directly, no.

MR. SHEPHERD: And you don't live in Woodstock?

MR. LEE: No, I do not.

MR. SHEPHERD: Have you ever been there?

MR. LEE: No.

MR. SHEPHERD: Now, I want to -- have you both seen -- you recall that there was a -- that in the share purchase agreement there is a reference to a data room? Do you recall that?

MR. BERTOLO: Yes.

MR. SHEPHERD: Have you both seen the documents and the material in that data room?

MR. NETTLETON: Madam Chair, I -- I'm going to object to the -- I'm going to object to the question, Madam Chair. The data room and the contents of the data room were all done in respect of the negotiation of the transaction, and that is a matter that is not relevant to the MAAD application and the no-harm test.

MS. LONG: Mr. Shepherd, where are you going with this question?

MR. SHEPHERD: I just want to know the scope of their knowledge. That's all. I'm not going to be asking about negotiations or anything like that. I'm only trying to understand how much of the information relating to this transaction these two witnesses know. That's all. So I can tailor my questions to be more efficient.

MS. LONG: I think that would be good.

MR. SHEPHERD: Okay. So can I find out whether they have seen the stuff in the data room?

MS. LONG: You can ask that question.

MR. SHEPHERD: Yes.

MR. BERTOLO: I've seen the material. I can't say I've seen every little piece of paper in it, but I've seen the majority of the material in the data room.

MR. SHEPHERD: And, Mr. Lee, have you?

MR. LEE: I have not.

MR. SHEPHERD: Okay. Thank you. So now I want to -- and, Madam Chair, I think for the purposes of my cross-examination, I prepared a compendium, which is now Exhibit K2. And I'm also using -- I was going to include these and I realized I was referring to almost all of the interrogatories. So given that I -- you should probably have the package of interrogatories available to you during this cross, because I'll be referring to quite a number of them.

So I want to start with Interrogatory 1, Board Staff No. 2. Do you have that in front of you?

MR. BERTOLO: I do.

MR. SHEPHERD: Okay. And so this says -- I think you are projecting that there will be savings of $3 million a year or so, as a result of this transaction; is that right? In operating costs, and a million in capital?

MR. BERTOLO: Sorry, are you referring to something specific?

MR. SHEPHERD: Well, the question starts -- the third line says:

"Savings of approximately 3 million per year in OM&A and a million a year in capital."

That's in the question, but I think it is from your evidence. Is it correct or not? Is that what you're claiming?

MR. BERTOLO: Yes. Yes.

MR. SHEPHERD: So if there are savings, then somebody's rates are going to go down, right? Sooner or later, somebody's rates have to go down if there is a savings, right?

MR. BERTOLO: That's the normal implication.

MR. SHEPHERD: Okay. Whose rates are going to go down?

MR. BERTOLO: At what point in time?

MR. SHEPHERD: Let's call it 2020.

MR. BERTOLO: We've not made rate determinations at this point in time.

MR. SHEPHERD: All right. Am I right in understanding that your current expectation is that the rates of the current Woodstock customers are not going to go down after five years from now? Is that right?

MR. BERTOLO: We've not made rate determinations at this point in time. All we do know is that during the first five years their base distribution rates will go down by the 1 percent and be frozen over that period of time.

MR. SHEPHERD: Okay. Now, you talk in this response -- I'm going to come back to the savings you're claiming, but you talk about -- I'm just trying to see -- the question says on the first page:

"These savings will result in downward pressure on WHSI's cost structure, which would tend to decrease rates relative to the status quo."

Now, you agree with that, right?

MR. BERTOLO: Yes.

MR. SHEPHERD: So WHSI, of course, will not have a cost structure after this transaction, will it? It will actually be Hydro One's cost structure that will be reduced, right?

MR. BERTOLO: Yes, that's true.

MR. SHEPHERD: And so the question is: When you are talking about decreasing rates relative to the status quo, whose rates are you talking about there?

MR. BERTOLO: The implication would be Woodstock's rates could go down, depending on the rate structure at that point in time, given that the Board has clearly stated that cost structures influence rates designed -- not designed. The rates that are applied in the future.

MR. SHEPHERD: Okay. But I guess here's the thing I don't understand. The costs for an individual -- for one town within your service territory don't affect the rates in that town, except indirectly, do they? Because you have postage stamp rates, those same rates apply to all your customers; correct?

MR. BERTOLO: That's in Hydro One's service territory.

MR. SHEPHERD: So you are saying that this service territory, Woodstock, is not going to become part of your service territory?

MR. BERTOLO: I did not say that, sir.

MR. SHEPHERD: Well, what are you saying?

MR. BERTOLO: It will become part of the broader operational territory. As far as the rate design, we have not determined it at this point in time.

MR. SHEPHERD: So then if the Board made a condition that you can't apply the higher cost structure of Hydro One to Woodstock, that would be fine with you?

MR. BERTOLO: Well, the Board is at liberty to do whatever it needs to do.

MR. SHEPHERD: Okay. Good. So you said here that in -- I'm going to talk a little bit about the savings in a minute, but these -- the savings that you are forecasting, $4 million a year for the next five years, those are not guaranteed, right? In fact you've said that?

MR. BERTOLO: We've taken the risk on those savings.

MR. SHEPHERD: And that -- the premium you are paying, which is -- the premium you are paying is, what, about $29 million?

MR. BERTOLO: In my opening comments I stated that rate base at the time of the transaction was $32 million. So therefore there's a $14 million premium against rate base.

MR. SHEPHERD: So as long as the -- as you get 70 percent of the savings, you will cover your entire premium, right?

MR. BERTOLO: That math doesn't add up.

MR. SHEPHERD: $4 million a year for five years times 70 percent is $14 million.

MR. BERTOLO: No, you just said we'd cover 70 percent.

MR. SHEPHERD: No, I said if you get 70 percent of the savings that you are forecasting, you will cover the $14 million premium. Yes or no?

MR. BERTOLO: Yes, roughly.

MR. SHEPHERD: Okay. So we asked: Well -- and indeed Mr. Harding asked earlier today: Well, what are the rates going to be like for the ratepayers of Woodstock Hydro after that five-year period? You've got all these savings; they should be getting those after that five-year period, right? That's the general concept? Are they going to get those $4 million a year in savings?

MR. BERTOLO: The rate design will be determined at a rate application leading up to that sixth year.

MR. SHEPHERD: Well, it's your statement that the savings are going to decrease rates for Woodstock Hydro, so I want to know how is that going to happen. You can't just say: Well, we don't know how.

Are you going to make a commitment that rates are going to go down, are going to stay below what they are today because of these savings?

MR. BERTOLO: I don't know what the rate regime will be six years from now. The Board has indicated cost structures lead into underpinning of the rate design, the rates that will be in effect at that point in time. At this point in time, this is our projection, that we firmly believe there will be savings. That's our operating model. We believe that's what's going to transpire.

In year five we'll make the appropriate rate application with the appropriate rate determination at that time as to what rate regime we are going to ask for for this property and a bunch of other properties, potentially, that may be acquired over that similar period of time, which will then be balanced against Hydro One's rate design for its customers, and we'll make the appropriate application at that time.

MR. SHEPHERD: Board Staff asked you to -- in Interrogatory No. 3, to confirm that your rate classes on rebasing for Woodstock will reflect the cost to serve the WHSI service area as impacted by the productivity gains due to the consolidation, all right? So you didn't say yes or no. What you said is, We're going to apply for rates, and those rates will reflect the cost to serve the customers.

So my question is, one of your options is postage-stamp rates, right? They get the same rates as everybody else in the Hydro One franchise area, right?

MR. BERTOLO: One of the potential --

MR. NETTLETON: Mr. Shepherd, please be fair with the witness. What line 33 says is not just -- reflect the cost to serve those customers, but the cost to serve these customers as impacted by the productivity gains due to consolidation.

MR. SHEPHERD: Okay, and so I'm asking the question, those $4 million in savings, are the Woodstock customers going to get those? Or are they going to get a half of 1 percent of them because the Hydro One customers throughout the province are going to get the rest of them? Which is going to happen?

MR. BERTOLO: Today, I don't know, sir, because we've not designed the rate regime for these customers at that point in time.

MR. SHEPHERD: Okay, do I understand correctly that you basically have -- and I'm not trying to put words in your mouth, I'm just trying to simplify, and tell me whether -- if the simplification is not there, just say so.

Is my understanding correct that you basically have three choices here: You can either do what you did the last time, which is give them the same rates as everybody -- as your other customers, as your legacy customers, harmonize across your service territory, which is what you did the last time you rebased all your acquisitions. That's choice number 1.

Choice number 2 is you can do what you did with Brampton, which is you can have a separate set -- a rate schedule just for Woodstock that deals only with their separate costs.

Or third, you can take all of your current acquisitions, your sequence of, what is it, 35 or something you were talking to, whatever, some number, get those acquisitions all done, and then set a rate class for those utilities.

Those are basically your three choices, right?

MR. BERTOLO: So it's not limited to those three, because as we actually framed it the third option we said: Or any other rate design that's available at that time, because five years is a long time, and rate regulation will probably change over that period of time. We're not sure what's going to be in effect at that time that may give us latitude to develop some other rate class that is not even contemplated today.

MR. SHEPHERD: I wonder if you could turn to page 45 of our compendium. You heard -- can you put up the map that you showed us, 3-C? Is that possible to put that up on the screen? 3C? The one that showed Woodstock and the area around it?

That one; that's right. Okay. So is Blandford-Blenheim in here somewhere?

MR. BERTOLO: I'm not familiar with that territory.

MR. SHEPHERD: It is right next door to Woodstock, right?

MR. BERTOLO: I'll take your word for it.

MR. SHEPHERD: Okay. So it's somewhere in this yellow area; is that right?

MR. BERTOLO: I don't know.

MR. SHEPHERD: You don't know. Okay. Let's assume it is. You can correct us if it's wrong. I don't have a map that shows Blandford-Blenheim on it. You acquired Blandford-Blenheim, the PUC from Blandford-Blenheim, in 2000, 1999, and so I'm now looking at what happens to -- happened to a residential customer in Blandford-Blenheim, the neighbours of Woodstock.

MR. NETTLETON: Madam Chair, I'm objecting to this question.

MR. SHEPHERD: This is...

MS. LONG: Mr. Shepherd, have you asked a question yet? Or...

MR. SHEPHERD: No, not yet.

MR. NETTLETON: I'm raising a concern, Madam Chair, in that this line of questioning seems to be taking the witnesses to an area that is discussing prior transactions that Hydro One was involved with, in particular the transaction of Blandford-Blenheim, and it's clear, Madam Chair, that this Board has made rulings in the past, particularly in the Norfolk decision, that clearly and expressly indicated that prior transactions, historical transactions, involving Hydro One were not relevant to this proceeding.

So I'm concerned that this line of questioning, this area of questioning, has any relevance to this decision -- or to this proceeding. And I do have references to the Norfolk decision if you'd like, but --

MS. LONG: Well, I've read it many times.

Mr. Shepherd, what is your question? In order for me to make a ruling on this, I have to understand where you're going with this.

MR. SHEPHERD: Okay. Well -- and by the way, the Board in Norfolk did not say that in this proceeding you couldn't consider this evidence. It said in that proceeding you couldn't, so that's why I chose the neighbouring utility, to make it directly relevant.

But the question I'm going to ask is, after going through what happened to those ratepayers, can the witnesses commit that that will not happen to the Woodstock ratepayers, the 200 and whatever, 64 percent rate increase? Will they make that commitment? I think the answer is, no, they won't, and I think that's going to be relevant to the Board.

MR. NETTLETON: Can you specify a time, Mr. Shepherd?

MR. SHEPHERD: Rebasing, harmonization.

MR. NETTLETON: Well, I think the evidence is clear. The witnesses have already told you what the rate guarantee is for the next five years should the transaction be approved, and the evidence that Mr. Bertolo has said is that he doesn't know what rates are going to be in year 6 forward, so --

MR. SHEPHERD: I've asked that question already, and I understand that the answer is that they can't give us an affirmative statement as to what the rates will be.

I'm asking a different question now, and that is: Can you give us a negative statement, a commitment that they will not be -- that Hydro One will not victimize these customers as with this whole list? We don't want another batch victimized. So we're just asking you to say we won't do it again.

MR. NETTLETON: Madam Chair, I'm objecting to the question. It's been asked and answered. It is -- it is the same question that Mr. Shepherd has asked to the witnesses about what rates will be in the period 6 forward -- year 6 forward, and Mr. Bertolo has answered. He says, I don't know. If he doesn't know what the rates are, how can he possibly give any assurance about what a 1,600-and-some-odd percent increase is going to be like?

MR. SHEPHERD: Madam Chair, we're going to ask you in argument to make it a condition in your ruling -- if you approve it -- that this not happen to the Woodstock customers.

And so I obviously have to ask the question to then put it in argument. And if their answer is, We don't know. We can't make any commitments like that. We might do the same thing to them, that's fine. That will just be part of the record.

MS. LONG: Well, I think that your first question was with respect to a guarantee with respect to rates, and Mr. Bertolo's evidence was that he can't make any determination, and I think your second question was: Can you guarantee that there will not be an exponential -- and I'm paraphrasing here -- exponential increase in rates, and Mr. Nettleton, are you saying that that question has been asked and answered? That seems to me to be a different question. It may be a different question that's answered with, I don't know, because I don't know what the rates are going to be past 2015.

MR. NETTLETON: I would be surprised if he could answer the question, the second question, given the answer to the first question, any differently.

MS. LONG: Well, if Mr. Shepherd is going to put this in submissions, then obviously you may reply to those submissions. I think that it's only fair to put it to the witness so that he has had an opportunity to answer it.

MR. SHEPHERD: Do you want me to restate the question?

MS. LONG: I'd like you to restate the question.

MR. SHEPHERD: So the question is: Is Hydro One in a position -- and you're the witness, Mr. Bertolo, on behalf of Hydro One, right? Can you -- can Hydro One make a commitment at this time that there will not be triple-digit increases in the rates for Woodstock customers at the time of rebasing? Can you make that commitment?

MR. LEE: Sorry, Mr. Shepherd. Maybe I can be of assistance in this matter.

MR. SHEPHERD: Let me just stop you. Mr. Nettleton was clear that Mr. Bertolo speaks for Hydro One. So if you are speaking for Hydro One, please just say so.

MR. LEE: I will speak for Hydro One.

MR. SHEPHERD: Okay. Thank you.

MR. LEE: So to assist in determining your triple-digit increases, I guess what I want to bring you back to is your analysis. As an accountant, I understand the mathematics of it, but as a financial analyst, I disagree with what's been portrayed here because we're basically comparing apples to oranges.

If you look at 2005, as Mr. Shepherd has put together, these were the rates frozen in 2002 under Bill 210 and subsequently unbundled, meaning the cost of power and the TX components were stripped out. There was no direct cost allocation methodology applied to this, whereas the 2013, you know, there was, and these are the Hydro One rates.

I can also point to 2019; they also have some cost allocation methodology. But again, these were the Hydro One requested rates. They don't reflect the update. Nor is there an OEB decision on this.

So while I understand the mathematics of it, like, I disagree with the starting point and the ending point. So I can't say for certainty that there is a, you know, triple-digit increase or whatnot. So that's where I fail to see that comparator.

MR. SHEPHERD: Okay. Well, then before we get to the actual question I asked, I'll follow up on that for a second. Take a look at page 46. If you look at the bottom, the average of all of the medium-density acquireds, if you look in the middle you see a 224 percent increase over the period 2005 to 2013; is that correct? Is that mathematically correct, first?

MR. LEE: That is.

MR. SHEPHERD: Okay. Now go to the next page, which is "Hydro One legacy R1." So that's the customers you had before these acquisitions, and those customers were also frozen for the same period, but they only went up 55 percent.

So you want to make your point again?

MR. LEE: It is my understanding that Hydro One rates have always been cost-based. So what I see in, I guess, the first part of your argument, which was the Hydro One medium-density acquireds, we don't know for certain how these costs were determined or allocated in terms of the cost allocation methodology. So it is hard for me to say, yeah, this is an accurate starting point to ending point. So while I see that it is mathematically correct, I don't know the assumptions behind it. And as a financial analyst I have to question whether this is the right way to portray it, because we don't know the starting point.

MR. SHEPHERD: Well, we do know that in 2005, when everybody had been frozen -- so essentially let's treat that as 2002, because everybody was frozen, right?

So in 2005, Hydro One's monthly -- annual cost for a residential customer was greater than any of the acquireds; true? And that's true today, by the way. Your rates are higher than Woodstock or Norfolk or Haldimand or anybody else you're talking to; isn't that right?

MR. LEE: I'm not familiar with all the direct numbers, but if you say so, yes.

MR. SHEPHERD: So your costs are higher, aren't they?

MR. BERTOLO: If I may, the costs that the Board has made very clear that influenced the rate design, as per the Norfolk decision, is OM&A per customer. And if we look at the evidence, which we can take you to --

MR. SHEPHERD: Sorry, how is this relevant to my question? I'm asking you about how much you can charge --

MR. BERTOLO: You asked about costs, and I'm trying to answer about costs that are relevant.

MR. SHEPHERD: I'm not asking about costs. I'm asking about much you're going to charge the customer. My question was --

MR. NETTLETON: Mr. Shepherd, let him answer the question.

MR. SHEPHERD: No. If he is not going to answer the question that I am asking, then he shouldn't be allowed to go off on a tangent. If he is going to answer the question about rates to customers, great. Answer that question.

MR. BERTOLO: What I was attempting to answer was the Board has made it clear, going forward, that it is the cost structure today that will influence it going forward. And in the evidence I'm going to take you to, it's clear -- and it was clear in the Norfolk decision when we looked at OM&A per customer today, of Hydro One's UR rate class, which is the class that is most closely associated with the same density as what Woodstock Hydro has today, not a system-wide number.

And for that one, if I can take you to the evidence -- bear with me a moment. Exhibit A, tab 2, schedule 1, page 9, line 2, Hydro One's UR cost per customer on OM&A is 181, whereas Woodstock Hydro's, at least in the 2012 Yearbook, was 258. And if you look at actually the 2013 number, it's gone up to 277.

So the cost structure influencing rates going forward in this situation, in today's date, not back in 2000, which were prior transactions which had different ways of looking at costs, and the costs of the acquireds at that time is coming into question of whether those costs truly reflected the cost to serve those customers.

So the starting point might have been artificially low due to other, call it, regime anomalies that allowed those rates to be lower. So the starting point is in question of the chart you've provided.

MR. SHEPHERD: The -- Hydro One has the highest rates in the province except for Algoma, right? Right now?

MR. BERTOLO: On a system-wide basis, yes.

MR. SHEPHERD: Before you get rid of – I don't agree that -- customers don't actually care what your OM&A per customer is. That's irrelevant to them. And the Ontario Energy Board Act doesn't talk about protecting OM&A per customers; it talks about rates for customers.

But I want to just ask you -- you've said the proper comparison is to the UR class, right? Urban residential class? But Mr. Harding asked you today what class would these customers be in and you said you didn't know.

So what is it? Because it's not UR, is it?

MR. BERTOLO: My recollection, Mr. Harding asked me what were the rate classifications of the Hydro One customers in the Woodstock municipality. And I answered R1 to those.

MR. SHEPHERD: I thought he asked -- and maybe I miss -- I wrote it down wrong. I thought he asked: And what would the Woodstock customers be? And you said you didn't know?

MR. BERTOLO: If you are asking for the current applicable rate class equivalent to Hydro One right now, it would be UR because of the density.

MR. SHEPHERD: Okay. So, Madam Chair, over the lunch break I provided my friends with a document which is from EB-2013-0416. I have copies for the Board.

MS. HELT: If there is no objection, we can have these marked, then, as an exhibit.

MS. LONG: Thank you.

MR. SHEPHERD: And Madam Chair, I sent them electronically because, in fact, it is very difficult to see the Woodstock area on this, on the page I handed you.

I have to hand you a physical copy, but if I could ask that they blow this up to about 200 percent you will see -- you can see Woodstock, in fact, on here.

MS. HELT: Mr. Shepherd, perhaps I can interrupt for a second. If we can mark the zone 1 density overview map, then, as K3. And the cumulative energy savings graphs for 2011 and 2014 and the peak demand savings graph on the additional document, we'll mark as K4.

EXHIBIT NO. K3: ZONE 1 DENSITY OVERVIEW MAP FROM EB-2013-0416.

EXHIBIT NO. K4: CUMULATIVE ENERGY SAVINGS GRAPHS FOR 2011 AND 2014, AND PEAK DEMAND SAVINGS GRAPH.

MS. LONG: Mr. Shepherd, is there one map that we should be looking at?

MR. SHEPHERD: There is only one map.

MS. LONG: Only one map? I just have multiple copies of it.

MR. BERTOLO: May I get a colour copy of that, if possible, if you have an extra? Thank you.

MS. LONG: So do both witnesses have both copies of the documents?

MR. SHEPHERD: We do now, thank you. And this is a response to School Energy Coalition Interrogatory No. 56 in EB-2013-0416. This is attachment 1. There are several that show the density zones for Hydro One right now. They have a new high-tech mapping system that allows them to actually show it on a map.

And you will see that there are -- it is colour-coded. The light beige ones are low density. That would be, I guess, R2. The orangey sort of ones are medium density, and the high-density ones are the brown ones.

And I've asked this to be blown up because UR class is the brown ones. And so in the recent case Hydro One says, No brown in Woodstock.

So the reason why this wasn't provided is -- 24 hours in advance is because I didn't think that Hydro One would give evidence that it was going to be urban. And so I'm in -- I'm using it to impeach the witness.

MR. BERTOLO: If I can help the Board, if this is Hydro One's service territory, that's not Woodstock, that's the area surrounding Woodstock, and the mapping tool just happened to capture Woodstock within it. So our territory around the municipal part, as I said this morning in my evidence -- or to Mr. Harding's question is R1, and it does show it as R1.

It's not Woodstock Hydro's service territory that's represented on this map. This is our customers in that area, not Woodstock Hydro's customers.

MR. SHEPHERD: Well, that's interesting, because if you go over to Windsor -- want to go over to Windsor? Just move over -- you will see that Windsor, in fact, the whole Windsor area is all blocked up with different rate classes, isn't it? So why would that be different than Woodstock?

MR. BERTOLO: The city of Windsor on this map is above the R1 area there. See where it says "Detroit River"?

MR. SHEPHERD: Yes.

MR. BERTOLO: It is above river, which shows it as R2, which --

MR. SHEPHERD: So what you are saying is that is the city of Windsor there, which you've got as low density, but it is not really low density.

MR. BERTOLO: No, no, this just skates over not our territory. It makes no determination as to what Windsor Hydro's rate class would be. This wasn't intended to show other people within our rate design. This shows Hydro One's customers in those area for Hydro One's service territory. It totally is -- like I said, it ignores Windsor. It ignores Woodstock. It ignores London. It ignores everybody, because that's not relevant to us. That's not our service territory. So this is showing Hydro One's territory and customers that we have. The mapping here just skates over those large urban areas because that's not our service territory.

MR. SHEPHERD: Madam Chair, do you want to take an afternoon break or not?

MS. LONG: I do. Is now a convenient time?

MR. SHEPHERD: It is indeed.

MS. LONG: We're going to break for 15 minutes. We're going to be back at 3:30. Thank you.

### --- Recess at 3:11 p.m.

### --- On resuming at 3:29 p.m.

MS. LONG: Mr. Shepherd?

MR. SHEPHERD: Thank you, Madam Chair. Mr. Bertolo, the requirements for your urban density zone -- which would be the UR and the UGD and UGE classes, right? Is -- I'm reading from your -- from your current application before the Board:

"Areas containing 3,000 or more customers with a line density of at least 60 customers per circuit kilometre."

Is that right?

MR. BERTOLO: Yes.

MR. SHEPHERD: And right now Woodstock is 65 circuit -- the yearbook says it's 65 customers per circuit kilometre. Would you accept that, subject to check?

MR. BERTOLO: Yes.

MR. SHEPHERD: When you do this, then, do you find the area that everybody is at least 60 and then stop? Or do you find the area in which the average continues to be 60 and then stop? Or how do you do it?

MR. BERTOLO: My understanding is that they look at -- both tests have to be met. So they look for clusters first to hit the 3,000, and then they look at the density on top of that. And as long as both elements are met, then it qualifies under the current definition.

MR. SHEPHERD: No, but it used to be that the rule was it had to be a municipal area. And that's no longer the rule, right?

MR. BERTOLO: Correct.

MR. SHEPHERD: Or tat, sorry, Hydro One's proposal in their current application is to remove that rule? It hasn't yet been approved, but that's what you've proposed, right?

MR. BERTOLO: I'm not sure about the municipal boundary piece, but it is the combination of the two elements and I don't think there is a municipal exemption around that. It is just wherever they can find those clusters, and those are similarly situated customers, that they will qualify for that.

MR. SHEPHERD: Here's what I'm asking you. I think you're right that that's what's been proposed in the current application. The rule that is currently approved by the Board that is the prior rule, it you like, but is actually the current rule until the Board decides the current case, is that you look at a municipal area and determine whether it qualifies.

I believe that's the old rules. Can you accept that, subject to check?

MR. BERTOLO: Yes.

MR. SHEPHERD: And the reason I'm asking is that because if you acquire Woodstock, then wouldn't that be the case under that rule -- I'll get to the cluster rule in a second, but under that rule wouldn't it be the case that you would then have to add the rest of Woodstock, which you already served, and the result would be that they would be below 60 customers per circuit kilometre? Isn't that right?

MR. BERTOLO: If they were within Hydro One service territory, correct. But given that we have not made that application -- they're separate -- and the determination of what will happen with the Woodstock customers will happen five years hence, then whatever rules are in place at that time, that's what they'll be subject to.

MR. SHEPHERD: You can't make a commitment today, can you, that, under the current rules, the Woodstock customers will be in the urban density zone? You can't make that commitment, can you?

MR. BERTOLO: I don't need, to because we've stated in our application they will be kept in their own -- if the application is approved, they will stay as they are with a 1 percent rate reduction and a five-year freeze.

That's all that's before the Board right now.

MR. SHEPHERD: So the Board can't look after five years?

MR. BERTOLO: The Board can do whatever it cares to do, but on our application we've made it clear that during the five years the certainty we're giving is the 1 percent down and the five-year freeze.

MR. SHEPHERD: And you can't give any certainty or you can't give any, even, indication as to whether these customers will have a substantial rate increase after that; isn't that right?

MR. BERTOLO: That would be speculating, whether it's up or down.

MR. SHEPHERD: Well, you are thinking their rates are going to go down?

MR. BERTOLO: They could go down.

MR. SHEPHERD: All right. You are going to get savings of about $200 per year per customer, right? I guess in terms of revenue requirement, somewhere around 200, $250 per year per customer, right?

MR. NETTLETON: Can you refer the witness to the evidence where you're --

MR. SHEPHERD: 3 million divided by 15,000. It is not complicated.

MR. NETTLETON: Are you in table 2 of the application evidence? Is that where...

MR. SHEPHERD: Sorry?

MR. NETTLETON: I'm just wondering what part of the evidence are you referring to -- the witness to?

MR. SHEPHERD: I asked the witness: $3 million, yes or no? And he said yes. 15,000 customers. Divide.

MR. NETTLETON: Thank you for the explanation, Mr. Shepherd, but I am just wanting the witness to know where you are in the evidence.

MR. SHEPHERD: I'm nowhere in the evidence. Are these facts true or not?

MR. BERTOLO: 3 million divided by 15,000 is 200.

MR. SHEPHERD: So roughly you are expecting to save, for each of the next five years, at least $200 per customer, right?

MR. BERTOLO: That's a good projection.

MR. SHEPHERD: Okay. And so during those five years, the Woodstock will get none of that, right?

MR. BERTOLO: The Woodstock customers get the 1 percent down and the five-year certainty.

MR. SHEPHERD: How much did you say the 1 percent was?

MR. BERTOLO: On current?

MR. SHEPHERD: Yeah.

MR. BERTOLO: Roughly 31 cents per month.

MR. SHEPHERD: Okay. So that's -- so they're going to get $6 -- no, $2 out of the 200, right?

MR. BERTOLO: They will get that certainty over the five years, as opposed to taking the risk which Hydro One will take that those savings will materialize.

MR. SHEPHERD: I'm not actually concerned about that so much. The Hydro One customers are not going to get the benefit of that $200 per customer either, are they? That's going to Hydro One Inc. to cover the costs of acquiring this utility, right?

MR. BERTOLO: As the Board has deemed appropriate.

MR. SHEPHERD: It is a yes/no question.

MR. BERTOLO: Yes.

MR. SHEPHERD: Thank you. So what I'm really going after is: At what point do those $200 per customer savings benefit the Woodstock customers? Is there a point at which that happens?

See, let me give you a preface to this, because I'm actually not trying to be a problem here, despite my tone. The whole concept of this consolidation thing is that there's going to be savings driven by consolidation.

And for a period of time, the acquirer shareholder, if you like, gets those benefits, and then after that the ratepayers get them.

So I'm saying: Fine. For five years, you get them. That's fair enough. After that, at what point did the Woodstock Hydro customers get them and how did they get them?

MR. BERTOLO: They will get it in the rate design in year 6.

MR. SHEPHERD: So they will save $200 per customer on average, or something like that?

MR. BERTOLO: It depends where it is and what the rate design is at that point in time.

MR. SHEPHERD: Okay. What the customers are concerned with, and here's the nub of this on rates -- I'm going to go to other things other than rates in a second, but what the customers are concerned with is that there will be all these savings, for sure. You won't be serving them in the same way. It will be less expensive, and maybe less service. We'll get to that, but that's a whole other question.

But what the customers of Woodstock are concerned with is that they will not only not get any of the benefit of that. They'll actually get a rate increase, and then the combination of their rate increase plus the savings will go to all your current customers, other than them. They'll get none of it.

How do you explain to them -- and I'm going to ask the Board to do this as well in their decision. That's why I'm raising it with you. How do you explain to the customers that that's not going to happen?

MR. BERTOLO: So as we tried to lay out in all the evidence, there are savings. And I'm glad you agreed with us that there will be savings. Those savings will underpin the cost structures that will affect those customers going forward.

When we make the rate application in year 6, the Board has been very clear in Norfolk to make sure that they are cost-based rates. Given that there are going to be savings, those will, by definition, accrue to the ratepayers at that point in time.

The rate design, though, just isn't set at this point in time. So it's a question of how that all gets parcelled and balanced before the Board in its application, taking into account all the Board's principles that it has. Clarity, stability, practical, cost recovery, all those principles will go into that rate design at that time. And our cost savings will be reflected at that point in time.

MR. SHEPHERD: I'm sorry, Mr. Bertolo, I'm actually -- I don't disagree with anything you're saying. I'm trying to nail down the equivocation on which ratepayers. That's where I'm really after here, which ratepayers it's going to benefit, because the normal rule is that you average out the cost over everybody in a class. So if you put these customers into UR class, let's say you do, then they're going to -- costs are going to be averaged with everybody else in the province. Their rates are still going to go up, even though the costs to serve them in their local area are lower, because it's an average.

And I'm trying to get a sense of, how can you tell them today that's not going to happen?

MR. BERTOLO: So two points on that. First off, current Hydro One UR rates as per the submission shows that the revenue to cost on that UR class is actually at 1.29, so that class is being overcharged for the cost to serve.

It's been clear in the submission that that class is going to be realigned so the cost in UR is going to go down over the period of time, or the revenue-requirement ratio will balance that out. So --

MR. SHEPHERD: Before you leave that point, can I just make sure you clarify? And UGE and UGD, what happens to them? Their revenue-to-cost ratios are below 1, right?

MR. BERTOLO: They will be appropriately adjusted, because now that we have the benefit of greater granularity with all the information, each rate class will be charged its appropriate rate, as opposed to the cross-subsidization that has happened in the industry for the last 50 years that we're all aware of that exists, so everything is being realigned appropriately.

So you mentioned the UR class. That UR class and Hydro One is actually going to benefit from that exercise, because it has been overcharged. So the dilemma is, going forward, depending on where Woodstock Hydro's rates would have been six years from now if had stayed alone, given the cost pressures that that utility has faced, then their rate could, in fact, be even higher than what Hydro One's UR rate would have been at that point in time. We don't know today. Ergo, until we get closer to that point in time that we have to make that determination, we'll have to balance all these out to put the appropriate rate regime that's fair to all the customers in which we're serving, and that will be in that rate application in year 6, which is the appropriate time to do it, when we actually have fact, as opposed to speculating today on where the rates will be.

MR. SHEPHERD: So the result then is that these customers could, in fact, be whacked? The result that I'm talking about could, in fact, happen, right?

MR. BERTOLO: I didn't say that. Anything could happen going forward. It is six years hence. The question is the evidence that we put in the application is, our cost structure for that equivalent one is lower than Woodstock's today, so against the status quo, as clearly delineated by the Board in the Norfolk decision, where they're looking to OM&A per customer, our number is materially lower than Woodstock's today.

So if you took that same premise as a scenario and played it out, it would be lower than Woodstock would be then.

MR. SHEPHERD: I'm just looking at page 44 of our materials. Can you look at page 44 of Exhibit K.2? This is -- this is the data from the recently-filed benchmarking report of the Board done by Pacific Economics Group.

And this was sent to you yesterday, I think, and I see that the cost per customer of Hydro One Networks is $1,046 and the cost per customer of Woodstock is $739. They are both way off from the benchmark, but you're worse, right?

MR. LEE: Mr. Shepherd, my understanding that it also includes capital costs, so -- because of the infrastructure and the diversity of our ratepayers, that it includes a bigger system.

MR. SHEPHERD: Sorry, explain that?

MR. LEE: Explain which part, sir?

MR. SHEPHERD: You have a bigger system, and therefore your costs -- you have more customers too. You should have economies of scale, not the other way around.

MR. LEE: But it serves a wide-ranging territory.

MR. SHEPHERD: Oh, so it is the rural argument now. So the problem -- the reason is that you're rural, right?

MR. BERTOLO: It is a reflection of the fact that Hydro One's service territory is large. If you look at the next column, you actually see where it takes into account the size of our territory, and in that one we are the fourth best in the equation, so we can have fun with these numbers by -- depending on which metric you care to look at.

In addition, if I may, this report that was submitted, in Hydro One's response at EB-2013-0416 in Exhibit 1, tab 3.03, schedule 1, Staff 60, we responded that the fact that Dr. Larry Kaufmann, who was the author of this report, made it clear, in that Hydro One and Toronto Hydro were anomalies in this report and could not be compared because of the uniqueness of their territories.

MR. SHEPHERD: Who did you say was the author?

MR. BERTOLO: Dr. Larry Kaufmann was the one I understand presented this report at the working session where the PEG report was provided.

MR. SHEPHERD: No, no, this is actually not done by Dr. Kaufmann. This was done by other people done at Pacific Economics Group a year later.

MR. BERTOLO: Okay. Either way, the --

MR. NETTLETON: Madam Chair, the problem with this aid to cross is that we don't have the author. We don't have any knowledge. We have Mr. Shepherd telling us now who the author is and what its source is and how it came to be.

When we were presented with this document, I think what Mr. Bertolo is trying to explain is his understanding of where these numbers derive from and the fact that the School Energy Coalition, School Energy Board Coalition, had been provided with this type of information and specifically addressed questions about the comparability of Hydro One in this study, and I think that's the fact that Mr. Bertolo is refreshing Mr. Shepherd's mind in response.

MR. SHEPHERD: This document has been on the record in multiple proceedings. Hydro One has seen it lots of times, including in 416, and the data is from a Board document. There is no issue about whether this is correct. And it's not new to them.

MS. LONG: I don't think the witness is refuting the numbers here. I think you are offering an explanation as to your interpretation of the numbers; am I correct?

MR. BERTOLO: Yes, that's correct.

MR. SHEPHERD: And the interpretation appears to be that you are an outlier, right?

MR. BERTOLO: Yes.

MR. SHEPHERD: Okay. Good. And it's true, isn't it, that in fact the Board concluded that Hydro One and Toronto Hydro were so unproductive, so bad in how they run their utilities, that they couldn't be included in the industry averages; isn't that right?

MR. NETTLETON: Madam Chair, now Mr. Shepherd is asking the witness to speculate on the position of the author of the report, and the author of the report is not here.

MR. SHEPHERD: I did not --

MR. NETTLETON: So it's not a fair question, Madam Chair, for this witness. The witness is free to answer questions about the content of what is spelled out here, but to provide a view on some hearsay statement that Mr. Shepherd wishes to raise at this point is just not fair.

MR. SHEPHERD: It is from a Board report.

MR. NETTLETON: The Board -- Ms. --

MS. LONG: Well, you know what? I'm actually going to step in here, because at the end of the day it is the Panel that has to make the decision, and what we are really looking for is the evidence that's going to help us make this determination.

I want to talk about the efficiency assessments, the numbers that are here, so perhaps, Mr. Shepherd, if you could direct your questions to the numbers that are here, the witness may be able to answer those questions, because I think the Panel would find that helpful.

MR. SHEPHERD: All right. So I did want to go to that, because my friend Mr. Bertolo says that the expectation would be that Woodstock Hydro rates would go up over the next five years but for this acquisition; isn't that right? That that's what you've said?

MR. BERTOLO: I said that in the last yearbook the demonstration by Woodstock Hydro was that their OM&A per customer went up from 258 to 277.

MR. SHEPHERD: That's not the reference I'm referring to. Earlier today you said that the comparison of the freeze minus 1 percent should be to Woodstock rates going up, because that's what most people do. Most utilities go up, right?

MR. BERTOLO: I said of the ones that we have seen submitted, all the rates -- applications have been to the upside. What we have offered Woodstock Hydro is down and frozen over the five-year period of time.

MR. SHEPHERD: Now, so the efficiency ratings for these three -- for these two utilities are on this table on page 44. What it shows is that Hydro One is the second-worst in the province, although 2013 showed an improvement.

Now, we don't know what's going to happen in 2014 and 2015 yet, because you've asked for more money, but there is an improvement for 2013.

For Woodstock, Woodstock is way, way higher than what the -- than the benchmark that the Board uses, 28 percent in 2013, as -- actually a little worse than Hydro One.

So my question to you is: Doesn't that mean that when they file for cost of service and they are over-earning already, which we know is true, that their rates are likely to go down, not up? Isn't that correct?

MR. BERTOLO: They haven't filed as far as I know, and what this --

MR. SHEPHERD: They can't.

MR. BERTOLO: Agreed.

MR. SHEPHERD: You bought them.

MR. BERTOLO: So we don't know. So in this situation, what I see is a starting point that basically says Hydro One is not comparable against the rest of the numbers in here, but what it does show is that from '12 to '13, Hydro One actually had the best efficiency improvement of all the utilities. Granted, it started from a lower position, but that's the only thing you can infer from this because they're not comparable.

MR. SHEPHERD: So you can look at the improvement; that's comparable, but you can't look at anything else.

The thing that you look good on, you can look at that.

MR. BERTOLO: I'm not saying whether I'm good or bad. I'm just giving you my interpretation of the information you gave me and asked me to compare it.

And I'm saying my understanding is, from the author of this, you can't compare it.

MR. SHEPHERD: One last thing on rates before I go on to costs.

The -- you showed us the map, and that shows that you have -- in the municipality of Woodstock, you have your 700 customers and the other 15,000 that are served by Woodstock, right?

MR. BERTOLO: Correct.

MR. SHEPHERD: This is in 3(c), right? So my question to you is: Who pays the higher rates right now, your group or the Woodstock group? And what's the difference? How much?

MR. BERTOLO: I don't have the Hydro One R1 rate that is there, but the Woodstock Hydro UR rate, if you were to use the OEB's calculator for 800 kilowatts, is about $134.75 a month as of the time this was taken. It was done recently, my understanding is, with the 2014 rates.

MR. SHEPHERD: $134 a month?

MR. BERTOLO: And 75 cents. That's what the calculator shows. If you do it on a monthly basis --

MR. SHEPHERD: UR?

MR. BERTOLO: That's the Woodstock Hydro rate you asked for, how much would they be paying on a monthly basis.

MR. SHEPHERD: So residential would be about -- what's that -- $2,000 a year?

MR. BERTOLO: The OEB calculator shows, on a monthly basis, 134.75. Typical customer --

MR. SHEPHERD: I think that's not distribution. I think that's total.

MR. BERTOLO: Total bill, sorry. Oh, the distribution –- delivery rate is $45.89.

MR. SHEPHERD: Okay. So you don't know who pays more, your customers or the Woodstock customers, right?

MR. BERTOLO: The Hydro One R1 rate would generally be higher than most of the rates that are UR.

MR. SHEPHERD: In a number of other municipalities -- Kingston, Ottawa, Sudbury, Windsor, Hamilton, there's a bunch of them -- you serve part of the municipality and there is a local distribution company that serves the rest.

In any of those, any one in the province, are yours lower than the local distribution company? Is there one example? You can undertake if you wish.

MR. BERTOLO: I'm not aware of it, because of the current rate design puts postage stamps on those UR rates across the province.

MR. SHEPHERD: All right. I want to move on to another area. And I'm going to come back to the savings a little later, but I want to -- I'm conscious of the time today and I want to get to another area before we finish today.

And that is if the customers end up paying more, my question is: Will these Woodstock customers be getting something more for their money than they get now, or less? So this is -- the Board's value-for-money approach to rates is: Look at the outcomes. If the outcome is better you can charge more, right? You need to verbalise, sorry.

MR. BERTOLO: On a broad basis, yes.

MR. SHEPHERD: Okay. So can you identify where these customers are going to get more value for their money with Hydro One than with Woodstock Hydro?

MR. LEE: Mr. Shepherd, maybe I can help with that. So my understanding under our rate freeze and the 1 percent negative rider, Woodstock Hydro ratepayers would enjoy a reduction in their bill, but Hydro One will still be continuing to invest in the area, as you can see from the capital outlay that is projected.

So my understanding, as you grow rate base, we are foregoing the returns on that so that Woodstock Hydro, you know, will have additions to their structure and enjoy those benefits over that five-year period during the rate freeze.

MR. SHEPHERD: Yeah. That's not entirely correct, is it? Because rate base only grows if the additions are greater than the depreciation. But you are planning to reduce the additions substantially and they will no longer be greater than depreciation, will they?

MR. LEE: I believe that's incorrect. If you look at their financial statements, which I can point you to --

MR. SHEPHERD: You are saying the depreciation in the financial statements is the same as the depreciation for rate purposes?

MR. LEE: No. I am saying that the capital additions are higher than depreciation, so rate base is growing.

MR. SHEPHERD: But it only matters on a regulatory basis, right? So what we need to ask is what is the regulatory depreciation.

I'm happy to if you undertake to provide us with a table showing what you are expecting to spend on capital over the next five years, and the expected depreciation in each of those five years.

Actually, better yet, the depreciation included in rates for each of those years.

MS. LONG: Did you want to answer that question now, or do you want to do it by way of undertaking? Or you have a problem giving the undertaking?

MR. LEE: No, Madam Chair. Actually I have some data which I'm just going to take a look up, if you don't mind if I...

MS. LONG: No, that's fine. Take your time.

MR. LEE: Thank you. My apologies for the delay. I have found the information.

MS. LONG: Great. Thank you, Mr. Lee.

MR. LEE: So according to my numbers, WHSI's last rebasing in 2011-0426, the depreciation embedded in their revenue requirement is 1.9 million from a regulatory perspective.

And if I refer us back to table 2, which is Exhibit A, tab 2, schedule 1, page 8 of our application -- and my understanding of the Hydro One forecast is what we expect to spend, that it is indeed greater than the regulatory depreciation.

MR. BERTOLO: And if I can help, Mr. Shepherd, in addition to the rate certainty that we've offered over that period of time for value, if you're looking for it, there is the other benefits that accrue to the ratepayers of Woodstock, such as our call centre, extended hours that they have that are beyond what they've got right now, outage app that the Woodstock ratepayers don't currently have the benefit of.

We talked about earlier with Mr. Harding programs that Hydro One is putting into place that they now will have access to, that they wouldn't necessarily have if they were under a smaller utility and have the benefit of a larger utility, having the ability to effect larger programs in a more timely basis.

MR. SHEPHERD: I'm going to come to -- that's the conservation programs you are talking about; right?

MR. BERTOLO: Those are examples, yes.

MR. SHEPHERD: Yeah, I'm going to come back to that in a second. Let me just talk about the other things first.

Your -- your call centre is 24/7?

MR. BERTOLO: No, the -- yeah, the outage portion of it is 24/7.

MR. SHEPHERD: Sorry, I thought you just said your call centre was 24/7.

MR. BERTOLO: Enhanced hours, I said.

MR. SHEPHERD: Oh, okay. So it's not 24/7.

MR. BERTOLO: Call centre is for outage, but call centre for billing inquiries have longer operating hours than what Woodstock Hydro has today.

MR. SHEPHERD: Well, but you need them. You have billing problems, right? 25,000 of your customers currently are screwed up, right, even after you fixed the problem.

MR. BERTOLO: We had billing problems. Those are now under control, sir.

MR. SHEPHERD: Well, sorry. I thought the number you had left with problems was 25,000, which is more than Woodstock.

MR. BERTOLO: We're at levels pre the implementation of that billing system.

MR. SHEPHERD: The -- and you are going to have to convert them to a new billing system, right, so there will be billing problems for them then too, right?

MR. BERTOLO: No, we've clearly stated that we won't be integrating them until the system is stabilized and at the appropriate time.

MR. SHEPHERD: Okay, and so I just want to ask you a couple of questions. By the way, when you talk about these benefits, did you go out and do any customer engagement to find out whether the customers wanted these benefits?

MR. BERTOLO: They are not our customers yet.

MR. SHEPHERD: Okay. So you are saying that these are good for the customers, but you haven't followed the Board's normal rules of engaging the customers.

MR. BERTOLO: They're not our customers yet, so I can't engage them, because they are Woodstock's Hydro customers today.

MR. SHEPHERD: Did Woodstock Hydro engage them and say, Do you want these things that Hydro One can offer?

MR. BERTOLO: They've engaged them under their own operating model today, because that's all they can offer them --

MR. SHEPHERD: So you can't --

MR. BERTOLO: It's just a timing issue.

MR. SHEPHERD: So you can't say that these are value for money for Woodstock customers at all. You don't know. You haven't asked them.

MR. BERTOLO: I can't say that they're not. We haven't asked them, because it is inappropriate to ask at this point in time. They are not our customers.

MR. SHEPHERD: All right. Okay. Now, I wonder if you could turn to SEC Interrogatory No. 16. We asked you the question -- because you said you expect to be able to maintain or improve reliability for these customers. In fact, you said that again today, right?

MR. BERTOLO: I don't recall saying "improve". I said we would maintain it.

MR. SHEPHERD: I thought you said maintain or improve. And you certainly said that in your evidence, right?

MR. BERTOLO: The evidence does say that there is -- we -- our intention is to maintain or improve.

MR. SHEPHERD: So I'm reading from the evidence:

"Hydro One will endeavour to maintain or improve reliability and quality of electricity service for all of its customers."

Then you go on -- this is on page 12 of the -- of A-2-1 -- and you go on to say:

"Hydro One has committed to meet or exceed specific service levels for reliability and customer service."

MR. NETTLETON: Sorry, Mr. Shepherd, can you just -- you took us to interrogatory 16. Are we somewhere else in the evidence?

MR. SHEPHERD: I just said. A-2-1, page 12. Mr. Bertolo knows where it was. He was referring to it.

MR. NETTLETON: I'm just asking --

MS. LONG: Well, if Mr. Nettleton needs to follow along, then we will let him do that.

So Mr. Nettleton, do you have that reference?

MR. NETTLETON: Yep.

MS. LONG: Great.

MR. BERTOLO: Correct.

MR. SHEPHERD: So you have made those commitments, right?

MR. BERTOLO: It is noted in the evidence as section 6.9 of the share purchase agreement.

MR. SHEPHERD: So we asked the question: Would you agree that it's appropriate for the Board to make those commitments to maintain or improve reliability and to meet or exceed specific service levels for reliability and customer service, make those conditions of your distribution licence? Could you explain your answer, because I can't get it. I don't understand what you mean.

MR. BERTOLO: If I can help the Board, definitely. The reference in the evidence is a share purchase agreement, which is a commercial negotiated element between ourselves and the city of Woodstock which referenced those service parameters, and we happen to use the OEB's metrics, because those are understood in the industry, and they are reported, and that was an anchoring point that we could use from Woodstock Hydro.

With regard to the answer that you've placed, all we've said is that we're more than happy to oblige by whatever the code indicates that we need to do to maintain our licence, just like every other distributor does in the province.

And as far as improving goes, we all endeavour to improve. That's the objective, continuous improvement.

MR. SHEPHERD: Okay, so the answer -- so the question was: Do you consider it appropriate to include those conditions in your licence -- for the Board to include them in your licence? Your answer is, no, you don't believe it is appropriate.

MR. BERTOLO: That's not what I said. I said the Board can do as it needs to do, and all we're pointing out is if the Board feels that all distributors should be meeting certain requirements then that would be perfectly acceptable.

MR. SHEPHERD: So our question is a yes/no question. Is your answer yes or no?

MR. BERTOLO: For all distributors, yes.

MR. SHEPHERD: But for you, but nobody else, no?

MR. BERTOLO: I'm trying to understand -- the Board has clearly stated they want efficiencies in the sector, and efficiencies usually come by some standardization, so to single us out and under this MAAD application, I'm having difficulty understanding how that meets other Board's objectives by singling out us as opposed to others to do certain reporting requirements. That's all I'm stating.

MR. SHEPHERD: I don't think I got an answer, Madam Chair, but I think the non-answer speaks for itself. I'll move on.

The -- I want you to go to School Energy Coalition Interrogatory No. 22. And this talks about the -- that you said -- you have a commercial arrangement with the city with respect to your commitment for reliability and customer service, right?

MR. BERTOLO: Yes.

MR. SHEPHERD: That doesn't actually protect the ratepayers, does it?

MR. BERTOLO: The ratepayers are protected by the OEB's oversight.

MR. SHEPHERD: Okay. Your commitment doesn't protect the ratepayers, because it is not to the ratepayers, is it?

MR. BERTOLO: The penalty as structured in the share purchase agreement is with the city, so therefore the city gets the payment.

MR. SHEPHERD: And the penalty is non-material, isn't it?

MR. BERTOLO: Materiality is in the eye of the beholder. $200,000 is a sizeable sum of money.

MR. SHEPHERD: Actually, materiality is a technical term that the Board uses, and 200,000 is not material for Hydro One, is it?

MR. BERTOLO: Every dollar expended on a customer's behalf is material.

MR. SHEPHERD: Will you accept subject to check that your materiality level is $1.4 million?

MR. BERTOLO: I'm missing what I'm checking.

MR. SHEPHERD: What I really want to get at here -- I thought that was the easy part of the question, because there is materiality threshold. You file it in evidence every time you filed an application. It is known what it is. It is way higher than 200,000. But I -- let me move on to what I really want --

MS. LONG: Okay. Well, let's move on, because I think Mr. Bertolo at the outset said that he is not a rate specialist, and I think you've put to him that Hydro One has a materiality threshold, and he is unaware of that, so --

MR. SHEPHERD: Yeah, no, I'm moving on.

MS. LONG: -- let's move on.

MR. SHEPHERD: I'm moving on, because really, what I want to get to is the guts of this answer, which is that you say that the real reason, I think, that -- if I understand the answer -- and maybe I'll try to characterize it, but that the real thing that controls Hydro One's actions is that, if you had to pay this amount, that would give rise to further inquiry as to the rationale behind any reduction in service and reliability standards. That's what really controls your behaviour, right, as Hydro One?

MR. BERTOLO: I'm having trouble with the generalization. This was a specific commercial arrangement that we negotiated with the city, and it had to do with reliability.

We both agreed that the OEB has overview with regard to reliability. So to try to come up to -- with a commercial arrangement, not a regulatory arrangement, because the regulatory arrangement is clear. The OEB governs everything to do with reliability and service quality. So all we did here was use that as a proxy to try to make sure that our behaviour is in line with where it is.

The Board currently -- there are no penalties other than you are putting your licence at risk if you are not meeting those, and the Board will have discussions with you about it.

This is a commercial arrangement that just happens to use those metrics, to try to make sure that we're aligned.

Both the city and ourselves are concerned about reliability post the transaction. This was a way of just encapsulating that. And the penalty is to make sure that it is not just lip service. There is a penalty associated with it, and it was agreed to.

MR. SHEPHERD: Here's what I'm trying to understand. The Board is using a test called the no-harm test, which -- and one of the potential harms to the ratepayers is that their reliability goes down, or their customer service goes down or whatever, and any number of metrics go down. And I'm trying to figure out whether there is something in this deal that protects the ratepayers, and I believe your answer is no. The Board's ongoing regulation protects the ratepayers; that's it.

MR. BERTOLO: That is when it comes to reliability and service quality. And we've provided evidence to the Board that I clearly outlined this morning, that shows comparable results for assets similarly situated; not the same assets, but close by. So it gives an indication of where our operating procedures will be relative to the Woodstock Hydro assets as we go forward.

MR. SHEPHERD: Will you be reporting to the Board on an annual basis the reliability metrics for Woodstock Hydro?

MR. BETOLO: We currently report at a corporate level.

MR. SHEPHERD: So the Board will never know what reliability Woodstock experiences, will they?

MR. BERTOLO: The Board can always ask.

MR. SHEPHERD: Okay. So you're saying --

MR. BERTOLO: Well, there is no formal mechanism today to report that, so I don't know what we would be reporting or to whom we would be reporting it, and for what reason.

MR. SHEPHERD: So that the Board knows whether the ratepayers in Woodstock are being harmed.

MR. BERTOLO: You've asked about a reporting mechanism. The current corporate objective is to report those corporate numbers. That's what we do.

If there's a requirement beyond that then we'll comply with that requirement, but right now there is no such requirement.

MR. SHEPHERD: The --

MS. LONG: Sorry, I just want to clarify here. So what your position is is that post-transaction, if this transaction were to be approved in year 2, the reliability information reported to the Board would be provided as a whole for the Hydro One entity? Even though rates are going to stay the same for five years, you are not going to be reporting Woodstock's reliability information separately; do I understand that correctly?

MR. BERTOLO: Correct.

MS. LONG: Okay. Thank you.

MR. SHEPHERD: Do we have somewhere in the evidence a comparison of the Hydro One loss factors and the Woodstock loss factors?

MR. BERTOLO: I don't know.

MR. SHEPHERD: Because there are four loss factors, right? Is that right? Primary and secondary, and above and below 50 kilowatts? Is that right?

MR. BERTOLO: As far as I know, it's not in evidence.

MR. SHEPHERD: So I wonder if you could undertake to provide us with a table that shows the loss factors for Woodstock and the loss factors for Hydro One, for -- the current, the current ones that are included in rates.

MR. NETTLETON: Madam Chair, I'm not sure why this type of undertaking is being asked at this stage.

Mr. Shepherd, as with all other intervenors, was provided an opportunity to ask information requests or interrogatories.

It strikes me that there is absolutely nothing that has arisen in this discussion today that would have prevented him for asking for that type of undertaking through the interrogatory process.

Loss factors for comparative purposes between those two is -- between the two entities is clearly something that could have been asked. It wasn't.

And we're using or trying to use the time today for purposes of testing the evidence that's on the record right now. So I'm not sure where -- or why Mr. Shepherd is asking this question today. It doesn't arise out of anything that has been discussed with the witnesses.

MS. LONG: Mr. Shepherd?

MR. SHEPHERD: This is actually for Hydro One's benefit, not for mine.

Mr. Nettleton is treating this as if it's a courtroom type of situation, where if you are too late to ask for evidence, it doesn't get on the record.

That's not the Board's practice. The Board's practice is if something is relevant and material, it gets it, regardless of how late it is requested.

However, that's not why I'm asking for it. This material is on the public record now. I can put it in argument. I don't have to ask for it.

I'm asking for it so that, if there is a difference, they will have an opportunity in the undertaking to explain why Hydro One is worse than Woodstock. That's why I'm asking for it. Otherwise, I don't need to ask at all.

MS. LONG: Well, I do believe it is on the public record. So, Mr. Nettleton, it you object to the undertaking, I think what Mr. Shepherd is saying is that it will go into argument and you won't have an ability to respond.

But if you don't want to respond right now because you think it's not relevant, then you have that option.

MR. NETTLETON: My objection to the undertaking is maintained. And if Mr. -- if Mr. Shepherd wishes to refer to something on the public record, he can do so in argument.

MS. LONG: That's fine.

MR. SHEPHERD: I'm trying to be helpful.

I'm going to have one last section today. You are going to end at 4:30?

MS. LONG: No. How long do you think your last section will be?

MR. SHEPHERD: This section, I've chosen it because it is about ten minutes, but I have another 45 minutes after that.

MS. LONG: Well, that will take us too long because we actually do, as a Panel, have quite a few questions that we'd like to ask. So we would like to aim then -- what can you get done by 4:45? You are saying your next section is ten minutes and then you are going to be another 45 minutes after that?

MR. SHEPHERD: I have two other sections after that. One of which I can probably do in 15 minutes, I think. Yeah, I think so.

MS. LONG: Well, then we will sit until 4:45 if the reporter is fine with that. Okay.

MR. SHEPHERD: So I want to ask about conservation. And I have provided you with a page from the report of the Board released in December on 2013 CDM results.

And I wonder if I could get a number for that. I wonder if I could get an exhibit number for that.

MS. HELT: That will be K5.

EXHIBIT NO. K5: EXCERPT FROM BOARD REPORT ON 2013 CDM RESULTS.

MR. SHEPHERD: And it would be useful if you could get this up to as big as you can make it. The reason I say that is because the type is very small in the Board's report. And -- but you'd have to be under 25 to be able to read it.

[Laughter]

So -- but here's what I want to follow up on. The -- Mr. Harding asked you questions earlier today about the conservation experience of Woodstock and Hydro One, and you disagreed with the notion that it was such a huge difference between the two, right?

MR. BERTOLO: I don't recall the -- my recollection is we talked about programs and what Woodstock Hydro was able to achieve, and where Hydro One potentially differs in what they're doing. I just take issue with the words "a huge difference." I don't recall that discussion.

MR. SHEPHERD: Okay. Well, will you accept, subject to check, that Woodstock Hydro was the best performer in the province in cumulative energy savings as of the end of 2013, which is the latest day that we have, at 177 percent of their target? Will you accept that?

MR. LEE: Yes.

MR. SHEPHERD: And would you accept, subject to check, that Hydro One was well below the provincial average at 54 percent of the -- sorry, no, 60 percent, 60 percent of your target as of end of December 2013?

MR. BERTOLO: Yes, understanding that this chart is a snapshot in time of a four-year program.

MR. SHEPHERD: It's at the end of the third year, right?

MR. LEE: Correct.

MR. SHEPHERD: Okay. So Woodstock Hydro is about three times as effective as Hydro One, right, roughly?

MR. LEE: So at this point in time, yes, in terms of the cumulative energy savings, but if you look at your next chart the reverse is true, where Hydro One is higher in the peak demand.

MR. SHEPHERD: Well, that's interesting you say that. I wasn't actually going to go there, because that is another embarrassment for Hydro One, because Hydro One is at 54 percent of target in peak demand savings and Woodstock is only 44 percent, right? Both below where you should be, but in a similar range, right?

MR. LEE: Again, a snapshot in time of this four-year project, yes, but as I alluded to before, in the letter that -- in our annual report, our 2014 forecast is that we will -- we're on track to achieve 95 to 100 percent of our demand reduction target and 80 percent of our energy savings target.

MR. SHEPHERD: And it's actually true, isn't it, that these peak demand numbers in which you barely beat Woodstock, they are actually a particular scenario in the Board's report, scenario 2, in which it is assumed that the demand response activities that you carried out continue, they persist into the future; isn't that right?

MR. LEE: Unfortunately I'm unable to answer that question. I don't know --

MR. SHEPHERD: Will you accept that subject to check? I'm reading from the report. That's why I'm asking.

MR. LEE: Sure.

MR. SHEPHERD: Okay, and the -- because the reason I ask that is because Hydro One has a lot more demand response than Woodstock, don't they? Your programs are heavily based on demand response activities, aren't they?

MR. BERTOLO: I think, Mr. Shepherd, you have to take into account that these programs are province-wide again, and the customer bases, when you look at a tight urban situation that Woodstock has, is very different than a system-wide average of programs that Hydro One would have.

So again, to make these comparisons on system-wide programs that deal with customers that range from seasonal, very rural, to some urban in an average document compared to a very specific class on delivery, there's obviously going to be differences amongst it, so thank you for pointing out the differences.

MR. SHEPHERD: Woodstock was better than anybody else in the province as of the end of 2013, right?

MR. BERTOLO: At that point in time, yes.

MR. SHEPHERD: And you -- there is no chance that you are going to be able to match their results if you're running their utility area, is there?

MR. BERTOLO: I don't know. I can't speculate into the future.

MR. SHEPHERD: So you are suggesting that you might be able to get 177 percent of target too?

MR. BERTOLO: For the Woodstock-specific assets, potentially, if we are running the same programs for those specific assets.

MR. SHEPHERD: But you won't have staff in the local area. How can you possibly do it when your staff don't even live there?

MR. BERTOLO: This provides an overall corporate average. I don't know what the urban results are for us, so again, you are using a generic across the entire service territory as opposed to that specific. We don't have that information here to make that determination.

MR. SHEPHERD: Well, Mr. Harding asked an interrogatory about this, and he said -- this is Interrogatory No. 8 from Mr. Harding:

"Please explain...how the customers of Woodstock will continue to receive the industry-leading conservation initiatives delivered by Woodstock Hydro under the new merged framework."

And what you talk about is the programs that you are going to have, but you don't say anything about how you are going to achieve the sort of results that Woodstock achieved.

So tell us, are you going to achieve those sorts of results or not? Because if not, then the ratepayers are going to be worse off under you than under Woodstock Hydro, right?

MR. BERTOLO: We can't make that determination today. I don't own the assets. I don't own the programs yet. We know generally what they're involved with. Do we have the -- a full level of detail of how they're executing them at this point? I don't have that, because I don't own the assets.

What we offered were additional programs that Woodstock Hydro does not have today that will be made available to them. So all the answer is trying to do was imply that there are additional benefits that come with a larger utility that can be afforded to those Woodstock Hydro customers.

MR. SHEPHERD: You will agree, won't you, that if your conservation programs provided to the Woodstock residents are less effective than the programs provided by Woodstock Hydro, that that would harm the ratepayers? You will agree to that, right?

MR. BERTOLO: I don't know if my programs are less effective, though --

MR. SHEPHERD: I'm asking --

MR. BERTOLO: -- so how can I agree to that?

MR. SHEPHERD: -- if it was -- if that were true, your programs are less effective than Woodstock Hydro, if that's true, the ratepayers would be harmed; is that right, yes or no?

MR. BERTOLO: On that single dimension, by that logic, yes.

MR. SHEPHERD: Okay, so then I'm asking you to show, how are you going to get 177 percent? I didn't see anything here that says you are going to get to that sort of level.

MR. BERTOLO: I wasn't asked that question in this IR. We answered the IR, which asked us specifically around those numbers. I don't have specifics around their program, so we offered additional information to try to provide the piece that shows that there are additional benefits that could come with our owning those assets.

It didn't say we were going to harm them. It provided additional pieces for them.

MR. SHEPHERD: This Board has to make a determination as to whether the transaction will harm the ratepayers. This is an area in which, as you've agreed, if you can't perform at the level that Woodstock Hydro did, then the ratepayers would be harmed.

I'm trying to get -- I'm giving you the opportunity to explain to the Board why that won't happen.

MR. BERTOLO: I think the Board looks in totality on harm to the customers. They don't look at a single dimension. They look at the overall transaction.

On this one element I don't have the details on that one piece, but the Board should take comfort in the fact that the IESO OPA has oversight into all these programs. We are in constant dialogue with them because of the breadth of what we do, and therefore all of the governing authorities well know what our programs are, and they help guide us on how to deliver those programs.

So I would offer that Hydro One is well-versed in all those areas, and when it comes to the amalgamation of those programs with ours, those discussions will happen with the IESO and OPA and appropriate programs will be deployed.

MR. SHEPHERD: I have two questions about that. The first is, are you suggesting that the Board should not be concerned about the conservation because the OPA IESO is looking after it?

MR. BERTOLO: No, the Board should be, but the Board can take comfort in the fact that there is other bodies that actually have oversight over those programs.

MR. SHEPHERD: And the Board does not?

MR. BERTOLO: They do as well, but I'm saying specific programs that they -- the targets in my understanding are set by IESO OPA in conjunction with the utilities to try to define the programs.

MR. SHEPHERD: So your argument appears to be, we know what we're doing in conservation, but I'm looking at this chart and I'm saying, well, actually, no, you are one of the worst performers in the province. You are the worst large utility in the province on conservation, right?

MR. BERTOLO: At a snapshot in time, the program wasn't completed what this chart shows. It is a four-year program that shows a point in time.

The program might not have been at full execution. I don't have that information with me. But I'd also offer there is a difference in programs that are offered between very rural customers, rural, and urban customers. There is a very broad mix. This shows an overall corporate average.

MR. SHEPHERD: And you don't have any more detailed information that you can provide to the Board, do you?

MR. BERTOLO: Not today.

MR. SHEPHERD: Maybe later?

MR. BERTOLO: I don't have it.

MR. SHEPHERD: You don't have any additional information.

MR. BERTOLO: Not right now.

MR. SHEPHERD: I'm sorry, I'm trying to prevent a situation where it's implied that you were going to file something later. If you have something, file it. If you don't, just say so.

MR. BERTOLO: We answered the IR. That's the information that we have.

MR. SHEPHERD: Okay, good.

Now I want to turn to -- I'm trying to find a missing page, Madam Chair.

I want to turn to your suggestion that there will be savings. And I want to start with this table at page -- what is it? Table 2, I think, in A-21. Yeah, that you had up on the screen earlier. Table 2 on page 8 of A-21.

Do you have that?

MR. BERTOLO: Yes, I do.

MR. SHEPHERD: Thanks.

So let's start with OM&A. So your status quo scenario, that's what you are forecasting Woodstock's OM&A and capital would have been but for the transaction, right?

MR. BERTOLO: Correct.

MR. SHEPHERD: Okay. And that comes from where?

MR. BERTOLO: As I stated in my opening comments, a combination of looking at their historical numbers, and in addition to budgets, projections and discussions with senior management.

MR. SHEPHERD: So there is no documentary source of this that you can point us to and say: Here's their five-year plan, right?

MR. BERTOLO: No.

MR. SHEPHERD: Has Woodstock Hydro filed a distribution system plan?

MR. BERTOLO: I'm not sure.

MR. SHEPHERD: Can you undertake to let us know?

MR. NETTLETON: We'll make that undertaking.

MS. HELT: That will be J2.

UNDERTAKING NO. J2: TO CONFIRM WHETHER WOODSTOCK HYDRO HAS FILED A DISTRIBUTION SYSTEM PLAN.

MR. SHEPHERD: And what I'm asking you if you filed one, can you produce it, please? It will be on the public record, but I want it in the record in this proceeding.

MR. NETTLETON: If it's on the public record, then it's on the public record.

MR. SHEPHERD: It is normal practice to get it on the record in this proceeding. It is a document you have, if it exists.

MR. NETTLETON: The undertaking made, Mr. Shepherd, was to your question, and that was whether or not a five-year distribution plan had been prepared by Woodstock Hydro Services Inc.

MR. SHEPHERD: I don't understand why they –- if it has been filed, why they wouldn't produce it. It seems straightforward.

MS. LONG: I'm sorry, I'm lost in your conversation here. You are asking whether or not a five-year distribution plan has been filed.

Mr. Nettleton, you are agreeing to the undertaking to confirm whether or not it has been filed?

MR. NETTLETON: Right.

MS. LONG: You are asking if that distribution system plan can be filed if there is one, and, Mr. Nettleton, you are objecting to doing that?

MR. NETTLETON: I am, because the next question that we -- or concern that I have, Madam Chair, is if it comes on to the record, then these witnesses are not going to be able to speak to the material of a distribution plan that has been -- that has not been prepared by Hydro One Networks Inc.

We can confirm whether or not a distribution plan has been filed, but we cannot speak to that evidence. It's not our evidence.

MR. SHEPHERD: They are not the only applicant.

MS. LONG: I'm aware of that.

Is it Woodstock's Hydro position, Mr. Rodger, that it's not relevant? Mr. Rodger?

MR. RODGER: Well, I'm struggling with how -- again, how this relates to the no-harm test that the Board applies.

It is not part of the required application materials. It hasn't been asked for up until this time, so that's what I'm struggling with. How does it advance the record in this case, given what the issue is before the Board?

MR. SHEPHERD: Madam Chair, we didn't --

MS. LONG: Before we burn a lot of time on this, I would actually like to know if there is a distribution system plan filed. I'm unaware of it, so why don't we agree that that will be the undertaking? And we'll move on from there.

MR. SHEPHERD: Okay. I will want to see it, and --

MS. LONG: And you will raise that again, I'm sure. But you are not going to finish your cross-examination today, so we are going to take this in two steps and we're going to first determine whether or not there is a distribution system plan.

MR. SHEPHERD: Thank you.

MS. LONG: And, Mr. Bertolo, I'm going to interject here and ask you a question.

When you talk about how the CAPEX was determined, I had a question and I'm going to ask it now because we are here. SEC's Interrogatory 33 where it says:

"The capital cost estimate was not developed using an assessment of Woodstock Hydro's historical capital cost budget items."

What does that mean?

I'm sorry, that is SEC 33. It's the second paragraph. It's about five lines down.

I'm -- help me reconcile that with the information that you've said you looked at when you determined what the CAPEX would be.

MR. BERTOLO: I was trying to answer the question about specific categories under there. So we looked at it in aggregate on the capital side, not specific line-by-line determinations against our capital spending, because it is a different operating model under which they're functioning versus our asset risk assessment methodology.

So we basically -- in table 2, what we are attempting to do is show a steady state, as opposed to looking at elements that, in their capital budgets, were one-time event that are ups and downs that seem to distort some of the data.

So when we're looking at this on the capital side, we really were trying to look at where a steady state would be on most of their capital programs. And that's what we offered up in table 2.

SEC 33 was asking for a breakdown, and what we were trying to indicate is where our numbers were on a category-by-category basis, not where Woodstock Hydro's numbers would have been on those categories.

MS. FRY: So when you say you weren't looking at Woodstock's past capital expenditures, I think what I heard you say -- correct me if I'm wrong -- is you actually did look it at the past capital expenditures but you adjusted those to take out extraordinary items; is that right? And then you went forward from there? Is it that what you did?

MR. BERTOLO: Yes, effectively.

MR. SHEPHERD: Can I follow up on that, Madam Chair?

You said that your Hydro One forecast is a steady state?

MR. BERTOLO: Well, which point in time? Well, this tries to get to us a steady state. Obviously the first five years it is not at a steady state, because we are at an integration point in time.

MR. SHEPHERD: What it looks like in capital is that you are saying Woodstock Hydro would increase their capital spending marginally each year over ten years, but your capital spending would go up and down like a yo-yo. And so my question is: Where did that come from?

MR. BERTOLO: So ours is predicated on asset conditions that we could do during the limited due diligence, which is field crews went out and looked at the assets and took note, as best we could, information that we were able to get from data room elements that were provided to us. And then we used our asset risk assessment methodology to look at that fleet of assets and determined how we would run those assets.

And that's what informed our capital forecast going forward.

MR. SHEPHERD: Did you have a multi-year capital budget for Woodstock Hydro?

MR. BERTOLO: Sorry, were we provided a capital budget? We were given a few years of capital budgets.

MR. SHEPHERD: And it showed what they were going to spend the money on, right?

MR. BERTOLO: Under their operating methodology, yes.

MR. SHEPHERD: So what I'm going to ask to you do is, since your Hydro One forecast, now we hear on this, is, in fact, based on what you actually expect to spend the money on and the status quo scenario on capital appears to be what Woodstock planned to spend the money on, I'm going to ask you to provide those two documents.

What is the breakdown for each of those two forecasts? What is it that you are not going to spend money on or are going to spend money on that they were not, or vice versa? How are you changing the capital spending?

MR. BERTOLO: Well, again, they're different methodologies. So what we do here in this table was tried to provide an aggregate view of it, to show overall where there would be the aggregate capital that was to be spent.

Remember, in SEC 33 you specifically were asking for elements with regard to the capital commitment that was in the SPA.

MR. SHEPHERD: I am not asking about SEC 33 now. I'm asking about table --

MR. NETTLETON: Let him finish answering, Mr. Shepherd.

MR. SHEPHERD: He was going off in a different direction. I'm trying to save time.

MS. LONG: Well, let's let him. Mr. Bertolo, continue please.

MR. BERTOLO: So the -- in aggregate, this is trying to show you in aggregate where the capital dollars are expended.

I'm trying to understand to get down to that level of detail, what it would provide.

MR. SHEPHERD: You just said that the Hydro One forecast for capital was made up of the things you thought had to be spent given your limited due diligence. It's not a trend line at all. It's not a top-down calculation at all, which is why it goes up and down; isn't that right?

MR. BERTOLO: I'm taking issue with you saying that it –- a thin assessment.

We looked at the asset fleet. We have a listing of their asset fleet. We then look at the conditions as best as we can assess them versus the information that was provided to them.

So our field staff will look at it. Our field staff look at assets potentially differently than what Woodstock Hydro's staff would look at it, because we maintain things on a different basis.

Our inventory -- our data sources are much larger. They have less than ten distribution stations. We have got over 1,000 distribution stations. Our records that influence our asset risk assessment is more fulsome.

So what work they think they would be doing, versus what we would be doing, is just a different operating model. That's what this represents. It is the aggregate view on those assets as to where the difference would be.

MR. SHEPHERD: So it is a single formula? See, it sounds to me like you're saying that you looked at what needs to be done in Woodstock, and you said, Okay, based on how we do things, this is what needs to be done, this is how much it's going to cost. Is that right?

MR. BERTOLO: Yes, we run it under our process.

MR. SHEPHERD: Okay, so then there has to be a breakdown of Hydro One forecast, because you can't get to those numbers without identifying what you are going to spend the money on, right?

MR. BERTOLO: And this is the aggregate sum of all of that.

MR. SHEPHERD: Okay. So I'm asking for the breakdown, and I'm asking for the Woodstock breakdown so we can see how your capital spending is going to change relative to Woodstock, so that we can see whether the ratepayers will be harmed by that.

MR. BERTOLO: So the issue here is that these savings, whether they materialize or not, are to my risk, so I'm trying to understand, providing that level of detail, how it will influence the Board one way or another, given that this is the aggregate view of what we are projecting is going to happen.

In the subsequent IRs we provided it at a sustainment, SDNO level. There is a breakdown of those numbers on a percentage basis, you know, I can provide you here that in effect, in the status quo situation, for Woodstock, sustainment was roughly 13 percent, distribution 20 percent, system reinforcement 50 percent, other 16 percent. That's a breakdown. Hydro One, 20 percent roughly on the sustainment, 30 percent on development, 34 percent in system reinforcement.

MR. SHEPHERD: I'm struggling with how this is helpful, Mr. Bertolo.

MR. BERTOLO: It is the detailed breakdown you've just asked for. I've just given it to you.

MR. SHEPHERD: I'm asking you to give us a table that shows the Hydro One forecast and what you were going to spend it on. You got to that number of 2.2 in the first year, 2.9 in the second year, et cetera, by building up a budget. I want to know what the budget says, and I want to know then, and I think the Board needs to know, what Woodstock was going to spend the money on, because this is not about whether you are at risk. This is about whether you're serving those customers properly, and if you are not spending money on the right things, you are not serving the customers properly.

MR. BERTOLO: So the evidence that we have provided is back to the reliability in those similarly-situated assets. The evidence that we put before the Board is clear: Assets that we operate on the border of Woodstock, which is through our operating model, is run under our processes, which is the result of our asset risk assessment.

That shows similar operating results. That's the evidence before the Board that the operating premise under which we are going to operate provides similar results as Woodstock Hydro.

MR. SHEPHERD: So you are going to -- your operating model and your capital spending model for the town of Woodstock is going to be the same as the rural area that you serve near Woodstock?

MR. BERTOLO: No, I was saying the methodology, so the only comparator that we can have today is if you look at us operating in that area, so the asset risk assessment that runs on those assets, similarly situated, although, yes, those ones are the rural ones, but again it takes into account topography, geography, storms, everything else, which is a culmination of what you spend on various capital elements, trouble and all the other elements, so in the Beachville operating area the results show that they are very comparable.

Whether the number is 2.2 or 2.5, I'm missing how that determination will drive whether that number is correct. It is the result of our processes that underpin the fact that the capital that we do spend ends up with operating results that are similar to what Woodstock has.

Yes, the capital number in absolute terms may be less, but the reliability numbers are on par with what Woodstock Hydro has had, so therefore it won't cause any harm.

MR. SHEPHERD: Madam Chair, I've gone past 4:45, unfortunately. I don't think I'm going to nail this down today anyway. It doesn't sound like it. So I'm happy to stop now and pursue this when we reconvene, if that's acceptable to the Board.

MS. FRY: I had just -- just while you are on the topic, just one clarifying question: So if I'm understanding you correctly, I'm hearing that basically in capital planning there's some basic premises in doing the planning that are different for Hydro One than for Woodstock? Is that what you're saying? You are operating on different premises. Okay.

MR. BERTOLO: Right. We run a regional model, so therefore when we look at the assets and the work that gets done we tend to look at it on a broader context, so the work that gets done in any given year is a function of not only what the assets need, also the labour available to do it.

So a simple example is if Woodstock has so many linemen, they are going to keep them busy over the period of time. They will do work -- and this is not a criticism, it is just the reality. It's levellizing your work force from which you do.

As we run a regional work force, our regional work force, our provincial work force, will adjust wherever the work needs to be done at that point in time. So any given point in time here the work may be less in a given year, not because the assets aren't calling for it. It may be a combination of the assets and work force available, and then it may spike in another year because we are doing a lot more because we are being efficient with the work crews that are in the area, and they will deploy and do the work that does that.

It is a fundamentally different operating methodology, so the numbers will inherently be different, because it takes broader elements into context.

Also, our databases are a lot more fulsome, shall we say, in the assets that we're dealing, just by the scale issue that we've got, so when we run the assets and we are looking at a class of transformers, our databases may be more fulsome than what may be available to any LDC, just because of the sheer size of what we're doing, so we may run things differently on our operating experience. All that is brought to bear in the sum total that you're seeing here.

MS. FRY: Okay. And are those the main premises that are different between you and Woodstock, or are there any other differences in premises that you want to mention?

MR. BERTOLO: Those would be the key ones.

MS. FRY: Thanks.

MS. LONG: Mr. Shepherd, how long do you anticipate you will be when we reconvene?

MR. SHEPHERD: I thought I would be finished this section at 4:45, and I barely got into it, and we had this dispute, so I would say, depending on what the documents are that you are looking at say --

MS. LONG: Well, let's not consider the documents. Outside the documents, how long do you think you'll be?

MR. SHEPHERD: Between 30 and 45 minutes, I would say.

MS. LONG: Thank you.

And Board Staff, do you anticipate that you are going to have some cross-examination?

MS. HELT: Not at this stage, Madam Chair. It depends on what the documents that you are reviewing say and whether or not they're relevant.

MS. LONG: Okay, thank you. So we are adjourned for today, and we will discuss amongst ourselves what the next steps will be and advise the parties.

MR. SHEPHERD: Madam Chair, is it your expectation that we will reconvene tomorrow morning?

MS. LONG: No, it is not.

MR. SHEPHERD: So we're not on tomorrow --

MS. LONG: We're not going to. We are going to deal with these documents, and then we're going to decide how to proceed, so we will advise the parties and find another date, but it will not be tomorrow.

MR. SHEPHERD: Thank you.

MS. LONG: And witnesses, thank you for your assistance today.

### --- Whereupon the hearing adjourned at 4:48 p.m.