ONTARIO ENERGY BOARD

FILE NO.:	**EB-2016-0231**	**Five Nations Energy Inc.**
VOLUME:	**2**	
DATE:	**July 7, 2017**	
BEFORE:	**Allison Duff**	**Presiding Member**
	Christine Long	**Member**
	Ellen Fry	**Member**

EB-2016-0231

THE ONTARIO ENERGY BOARD

Five Nations Energy Inc.

Application for changes to its electricity transmission revenue requirement effective January 1, 2016

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Friday, July 7, 2017,
commencing at 9:40 a.m.

VOLUME 2

BEFORE:

ALLISON DUFF	Presiding Member
CHRISTINE LONG	Member
ELLEN FRY	Member

A P P E A R A N C E S

JAMES SIDLOFSKY	Board Counsel
LAWRIE GLUCK	Board Staff
RICHARD KING JEFF ST. AUBIN	Five Nations Energy Inc. (FNEI)
BRADY YAUCH	Energy Probe Research Foundation

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

E X H I B I T S

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

Friday, July 7, 2017

--- On commencing at 9:40 a.m.

MS. DUFF: Please be seated. Good morning, everybody. So this is day two of our oral hearing in hearing Five Nation Energy Inc.'s application to change their transmission revenue requirement.

Are there any preliminary matters that we need to deal with, Mr. King?

PRELIMINARY MATTERS:

MR. KING: None from me.

MR. SIDLOFSKY: I have one item, Ms. Duff, and it has to do with the transcript. In the transcript that was produced yesterday evening, I note that the comment here about Undertaking J1.6 is that that number wasn't used. In fact, it was. The request was for a breakdown of the cost of Five Nations' bus isolation project. That -- I believe that would have been Undertaking J1.6. There was a bit of discussion afterwards about whether that was already in Five Nations' evidence, and it became clear from the exchange that it wasn't, so my understanding is that that undertaking would still stand.

MS. DUFF: Is that agreeable to the applicant?

MR. KING: Yes.

MS. DUFF: Okay, thank you very much.

The other preliminary matter -- and Mr. Yauch, anything? All right. The other preliminary matter, turning our minds to this being the final day, would be timing of undertaking responses and then argument-in-chief to follow that.

So I have asked Mr. Sidlofsky and -- to confer with the legal counsel regarding potential dates for that. I understand there's vacation considerations from the witnesses, so we want to make sure that they have sufficient time to do the work involved in answering these and then perhaps set a date by which they would be filed, okay? So I will leave that with you, and perhaps during the break -- is there any comments on that initially?

MR. SIDLOFSKY: Initially, no, but I do understand that Mr. Reimer's vacation plans cover the 12th to 19th of this month.

MS. DUFF: Well deserved. Okay, thank you very much.

Then Mr. Sidlofsky, if you could proceed with your cross-examination.

FIRST NATIONS ENERGY INC. - PANEL 1, RESUMED

Patrick Chilton, Previously Sworn

Rod Reimer, Previously Sworn

CONTINUED CROSS-EXAMINATION BY MR. SIDLOFSKY:

MR. SIDLOFSKY: Thank you, and thank you for coming back this morning, panel. I am going to continue with a few questions about energy conservation, and I will begin by taking you to page 130 of the OEB Staff compendium.

At part B to your response to interrogatory 6-Staff-25 you provided a detailed breakdown of your proposed 2016 OM&A spending, and $30,000 was included for energy conservation, and that reflected $10,000 for each community served by Five Nations; is that correct?

MR. REIMER: That is correct.

MR. SIDLOFSKY: And in various places in the evidence and interrogatory responses you discussed what that budget is used for, but Staff would like to better understand your role in energy conservation in the communities that -- or with the distributors that you serve.

First of all, why did Five Nations apply for the IESO-funded Aboriginal Community Energy Program on behalf of Attawapiskat, Kashechewan, and Fort Albany?

MR. REIMER: This came from the original Ontario Power Authority conservation pilot project that FNEI work closely with. This was before CDM became mandated province-wide, so they wanted to determine what could work, come up with some draft guidelines and draft programs.

When that kind of began to wind down, the opportunity came for this Aboriginal Community Energy Plan. And so the people that were involved realized that this is something that the three -- those three communities could really make use of and that FNEI was in a good position to kind of coordinate this funding request and coordinate that work using the same people that had worked on the pilot project.

MR. SIDLOFSKY: Sorry, so you considered Five Nations as being in a better position to do that work than the individual distributors; was that it?

MR. REIMER: We are in a better position to coordinate that work and assist them in the development of this plan.

MR. SIDLOFSKY: And how much funding was received through the IESO program?

MR. REIMER: I believe it's in the evidence. Bear with me one second.

MR. SIDLOFSKY: Sure.

MR. REIMER: I don't have all the numbers memorized.

MS. DUFF: Please remind me, what is materiality for this utility? Is it 50,000?

MR. SIDLOFSKY: 50,000.

MS. DUFF: So this amount has been -- this amount is below that. Is there some other issue just in terms of the proper entity to deal with the IESO?

MR. SIDLOFSKY: It's really more to the policy question of whether it should be the transmitter or the distributor dealing with the conservation programs.

MS. DUFF: Okay. Well, then that question remains regardless of the dollar amount, so rather than spend time him finding the exact dollar...

MR. SIDLOFSKY: We can move on from that.

Perhaps I could take you to page 135 of the compendium. You explain there that Five Nations received a trueup payment from the IESO of $25,000 to cover overspending on conservation programs during the 2011 to '16 period. Do you expect that the IESO will cover any incremental costs in the future?

MR. REIMER: The ACEP program is just winding down as we speak. We don't anticipate there to be any over-expenditures, so we won't be asking the IESO to cover anything.

MR. SIDLOFSKY: And are you aware of whether the OEB has previously approved amounts for energy conservation in Five Nations revenue requirement?

MR. REIMER: Yes.

MR. SIDLOFSKY: Yes, it has?

MR. REIMER: Yes, it has.

MR. SIDLOFSKY: I am going to move on to a couple of questions on unplanned maintenance. And I will take you to page 134 of the compendium. Part I of your response to Staff -- 6-Staff-25 includes a statement that you record your maintenance activities as planned or unplanned, and in your last rate proceeding Five Nations included amounts of 90,000, or $30,000 per station for unplanned maintenance.

Now, in the current proceeding you have included 135,000, or $45,000 per station for unplanned maintenance, and you stated that the additional increase between 2015 actual and 2016 proposed is related to ongoing maintenance activities planned for 2016 and subsequent periods; is that correct?

MR. REIMER: That's correct.

MR. SIDLOFSKY: Are you able to provide your actual unplanned maintenance costs for the 2010 to 2016 period?

MR. REIMER: Yes.

MR. SIDLOFSKY: And that's not in your evidence at this point; is it?

MR. REIMER: It would have been in aggregate in the OM&A schedules.

MR. SIDLOFSKY: But you are able to break that out?

MR. REIMER: Yes.

MR. SIDLOFSKY: Would you mind undertaking to provide that, please?

MR. REIMER: Would you like me to read out the amounts?

MR. SIDLOFSKY: If you have them available, that would be great.

MR. REIMER: We have broken down our unplanned maintenance by station, whether at station or whether at transmission line. So I will start first with the unplanned station maintenance. 2016 actual was 11,417; 2015, 19,940; there was nothing in 2014; 2013 had 12,650; nothing in 2012; 2011, we had $2,307. In 2010, we had approximately $10,000 -- around $10,000 in unplanned station maintenance. For unplanned line maintenance, it was $2,800 in 2016. In 2015, it was $53,000. 2014 was $49,000. Nothing in 2012; 2011 had just over $17,000, and 2010 had just over $66,000.

MR. SIDLOFSKY: Okay, thank you for that. I am just a little confused by one statement in your response to the that part of the interrogatory. And specifically at the end, you said:

> “The additional increase between annual 2015 and proposed 2016 is related to ongoing maintenance activities planned for 2016 and subsequent periods.”

And what I am not clear on is how you would describe ongoing maintenance activities planned for 2016 and subsequent years as unplanned maintenance.

MR. REIMER: If you look at the first sentence, FNEI records its maintenance activities either as planned or unplanned. So the last line refers to the general increase in OM&A. It has to do with more planned maintenance procedures.

MR. SIDLOFSKY: And those ongoing maintenance activities that you refer to there, what are those? What are the incremental items? Sorry, I should have been clearer on that.

MR. REIMER: As discussed yesterday, as recorded in evidence, it would include things like preventive maintenance, testing procedure, oil testing, normal station maintenance as we discussed yesterday.

MS. DUFF: Sorry, Mr. Sidlofsky, could I interrupt?

MR. SIDLOFSKY: Yes.

MS. DUFF: Just getting back to the conservation and demand management, I knew that -- it just triggered a thought. In 2014, you had a balance; it was a liability of $746,000. So clearly in excess of your $50,000 requirement. And I am looking at the notes to the financial statement. It was there in 2014, but then it was gone in 2015.

I am just reading the notes, it was that you had not expended this money, so it was $746,000. Could you explain that in the context of what you are doing going forward?

MR. REIMER: One of the things that FNEI has always -- or one of the situations that FNEI has always found itself in -- from the community level, we are perceived to be kind of the leader when it comes to anything energy-related.

In this case, what came from the original pilot project with the OPA was an actual CDM program that's now referred to as conservation on the coast. It's an actual IESO-funded CDM program for each of the three distributors.

The thinking at the time was that neither one of them had the management capacity to role out these programs individually, but that if they would pool their money, hire one coordinator, that it would be much more effective. There would be economies of scale. All the materials could be ordered, sent up in the winter, stuff like that.

Initially, the Mushkegowuk tribal council had been in place to do the financial administration of this, so that the funds would be sent to the individual distributors as per the IESO agreement, the conservation demand management, those programs. They in turn would then forward the funds to Mushkegowuk, and Mushkegowuk would pay the coordinator, arrange for purchase and delivery all of the materials, kind of administrate that program.

That didn't work out very well and so the communities, the three LDCs, asked if FNEI could administrate that on their behalf. So we did this completely separate from any of our regular regulated activities.

MS. DUFF: Yes, okay, thank you for that.

MR. REIMER: So none of those expenses show up on our -- the only thing that shows up is that particular balance sheet item.

MS. DUFF: Okay, thank you.

MR. REIMER: I hope I have made myself clear.
MS. DUFF: So with respect to the 746,000, you never spent it. So that's why it was a liability to you?
MR. REIMER: It became very much -- it become very much a timing issue. There were funds that were forwarded to FNEI for this program at that year end that had yet to be expensed. So we were sitting on this money. It was payable to the program, and then in subsequent periods, we actually disbursed those funds.
MS. DUFF: So your plans going forward, would you ever been dealing with dollar amounts in that magnitude, $746,000 versus the $30,000 that we were discussing a moment ago?
MR. REIMER: Well, that's -- you are kind of comparing apples an oranges. The actual CDM program is in the magnitude of about $7-800,000 per year for all three communities. This 10,000 per community is just for minor things like, you know, back in the day we would buy the CFL light-bulbs? and hand them out at community fairs, stuff like that. Just minor. It wasn't really part of any formal official program.
We had asked for this money just in case there were cost overruns in the ACEP program. We felt that the budget that had been submitted to the IESO was fairly light on travel. There was a lot of assumptions that travel could be provided free, which usually doesn't happen. So we just wanted a bit of a buffer.
It turns out they managed to -- the program managed

completely within the budget provided, and so, you know, we don't anticipate having to cover any over-expenditures.

MS. DUFF: I am sorry, Mr. Sidlofsky, for intervening, but thank you very much.

MR. SIDLOFSKY: Just to follow-up on Ms. Duff's questions, did you say you weren't planning on needing the $30,000 going forward, then?

MR. REIMER: No, not to cover the over-expenditures in the ACEP program, no.

MR. SIDLOFSKY: But you're still planning it for other -- sorry, so what is that money for going forward?

MR. REIMER: That would be, like I say, for minor conservation materials, stuff just to -- there is, like I said, there is no real formal plan.

MR. SIDLOFSKY: Okay. So is that going back to things like CFLs and that sort of thing, what you were doing before --

MR. REIMER: Yes, something like that.

MR. SIDLOFSKY: -- or you just haven't figured anything out for that yet?

MR. REIMER: No. We wanted to see what was going to happen with the ACEP program. Like I said, that's just winding down now.

MR. SIDLOFSKY: Thank you. I am now going to take you to some questions about maintenance, specifically for poles, towers and fixtures, and even more specifically for account number 4930.

At pages 129 and 130, I am going to take you to your response to part B of interrogatory 6-Staff-25. And in that response, you noted that the proposed spending on maintenance, that is for poles, towers and fixtures for 2016, is $545,000 and it's made up of $45,000 for unplanned line maintenance, $50,000 for fibre line planned maintenance, 200,000 for planned maintenance of the transmission line, and 250,000 for right of way clearance. Now at -- and I believe you answered some questions about that yesterday as well.

But at part K of the same response, and that's at page 135 of the compendium, you stated that $450,000 is for the right of way program, and $95,000 is for the other maintenance activities. Now, they total the same amount in both places, but the activities seem to be different.

Could you explain the discrepancy there?

MR. REIMER: I wouldn't call it a discrepancy, I would just say the 200,000 and the 250 equal the 450. The sub-account 5137, planned maintenance transmission line of $200,000, together with the sub-account 5140, right of way maintenance, $250,000, those total -- those total 450.

MR. SIDLOFSKY: I realize the math works, but are you saying that your response in part K, when you refer to the right of way program or right of way brushing activities of $450,000, is that actually a combination of the maintenance of the transmission line and the right of way clearance?

MR. REIMER: Yes, there are some years where we will focus on the right of way clearing where we will use up the full 450. There are other years where we'll most likely have to do as we have in the past do a program of maintaining the anchors, and so we will cut back, we will cut back on the right of way maintenance -- most likely I imagine we will cut back on the right of way maintenance those years in order to free up the funds to do the retentioning of the anchors, the guide wires.

MR. SIDLOFSKY: Okay. Thank you. And --

MR. REIMER: It's more of an -- I would say more of an envelope. This is what we plan to spend on transmission-line maintenance activities.

MR. SIDLOFSKY: But in a given year the priorities could shift?

MR. REIMER: Yes.

MR. SIDLOFSKY: At page 134 of the compendium at part J of the same response, you provided a breakdown of actual spending related to poles, towers, and fixture maintenance for 2010 to 2016, and for 2016 your actual spending was 597,000, approximately 50,000 more than you had proposed. And 560,000 of that was spent on the right of way program. And we are just trying to determine whether you anticipate that the spending in that category is going to stay as high in 2016 over the IR -- excuse me, as high as in 2016 over the IRM term.

So as part of part J, Staff asked that you show both the historical actual and the forecasted spending in the category, but only the historical values were provided. Are you able to provide the forecasts for 2017 to '20 for spending in that category?

And just as a second part to that question, can you provide it at the same level of detail as you gave for the historical period in response to part J?

MR. REIMER: We forecast needing $450,000 going forward, plus those two other items. We are not able to forecast in any more detail. This is the envelope that we are requesting, and we have determined to work as closely as possible within that envelope.

MR. SIDLOFSKY: So just going back to my earlier question, that would be a total of 545,000 then, right?

MR. REIMER: That's correct.

MR. SIDLOFSKY: Okay. Just a question about your regulatory costs. At page 152 of the compendium, in parts A and B to your responses -- to your response to interrogatory 6-Staff-29, Five Nations provided a breakdown of its regulatory costs in each year between 2011 and 2016. Legal fees clearly make up the largest portions of those regulatory costs in each year.

I am just wondering what activities were occurring in those years that required legal fees at those levels?

MR. REIMER: Which years specifically are you referring to?

MR. SIDLOFSKY: Well, really all the years. Your last revenue-requirement application was in 2009 and 2010. I am just interested in what was going on that required legal fees ranging from, I guess, 220,000 in 2015 up to 369,000 in 2016.

MR. REIMER: There is always day-to-day legal matters.

The wrongful-dismissal lawsuit that we have been working on for the last couple of years is kind of bizarre. It's one of the... There's some significant work that was done in acquiring the 80 kilometres, the line assets, legal work regarding achieving financing for the new building.

MR. SIDLOFSKY: So then it's fair to say the activities would have varied each year, but in each of those years it seemed like you had a number of items that would require legal assistance going on; is that fair to say?

MR. REIMER: That's correct.

MR. SIDLOFSKY: Now, given that you've acquired the line and given that this application will deal with your revenue requirement for a five-year period, do you anticipate similar levels of legal fees going forward?

MR. REIMER: Historically that's -- this is a good estimate of what we will require going forward.

MR. SIDLOFSKY: I am just going to ask you a follow-up question on that, though. The items that you mentioned related to litigation related to an employment matter -- and I don't want to go into any detail on that. But litigation related to an employment matter, work related to the acquisition of the 80 kilometres of line, this application, those are -- you wouldn't characterize those as ongoing regulatory matters; would you?

MR. REIMER: No, the point I am making is that FNEI consistently needs approximately this amount, incurs approximately this amount of costs for various legal matters that arise from time to time. Will these specific matters continue indefinitely? I really hope not. However, something new will come up tomorrow which we can't anticipate. But historically this is the level of expenditure that we have had in those accounts.

MR. SIDLOFSKY: Okay. I am going to move on to some questions about your depreciation expense. And I will take you to page 163 of the compendium. In attachment C to your response to interrogatory 6-Staff-30, you provided your actual 2016 depreciation expense of $1.45 million, which is about $160,000 higher than the proposed depreciation expense of 1.29 million. Sorry, your proposed depreciation expense.

Can you confirm that the increase in depreciation expense between actual and proposed was caused by greater than forecast assets being placed in-service on an actual basis?

MR. REIMER: That is correct.

MR. SIDLOFSKY: And do you believe that your actual depreciation expense should be included as part of the proposed revenue requirement? Is that your position, that you are looking to recover the actual 2016 depreciation expense or proposed?

MR. REIMER: Proposed.

MR. SIDLOFSKY: And using that attachment, attachment C, as an example -- and Staff have found that this is the same for all of the depreciation schedules provided -- the depreciation line doesn't actually represent the depreciation rate applied to the assets; is that correct?

MR. REIMER: That is correct.

MR. SIDLOFSKY: Can you explain that?

MR. REIMER: Prior to IFRS and asset componentization, a specific asset code, whatever assets were recorded, for example, station equipment, were all depreciated at one rate. So a schedule like this, you could actually do the math, this times this, this times the percentage equals your depreciation expense.

After IFRS, after componentization, the assets that were, for example, recorded in station equipment had varying useful lives, and so it became a much more detailed calculation to determine the actual depreciation expense.

I left these percentages in more as a -- kind of to denote this is the general range. Probably in retrospect, I should have just removed that column; it would have been less confusing. But this is generally the amortization rates that apply to that, to that class of assets.

It does cause some confusion, but generally, these are the rates that that asset -- that specific account would have attracted. These are depreciation rates that would have been used for that specific account prior to IFRS.

MR. SIDLOFSKY: I assume you would have used some more detailed worksheets to prepare the actual depreciation calculations. Is that right?

MR. REIMER: That's one thing we work closely with our auditing firm.

MR. SIDLOFSKY: And do you have those worksheets?

MR. REIMER: No.

MR. SIDLOFSKY: Are you able to provide them?

MR. REIMER: Those spreadsheets? Those spreadsheets are with our auditing firm.

MR. SIDLOFSKY: And sorry, are you able to get them or not?

MS. DUFF: Well, I guess it stands that your auditor has done the review process and are they aware of, you know, the Board's uniform system of accounts and the rules and accounting procedures that are expected for the regulatory accounting? Can we have some assurance of that?

MR. REIMER: Yes, as noted in the evidence, all of these assets are being amortized as per the Kinectrics study and that should -- that should be in the evidence. It should also be in the notes to the financial statements as to the amortization rates that are being used.

MS. DUFF: Thank you.

MR. SIDLOFSKY: I won't ask you anything further on that. I think the Panel appears to be satisfied with that as well, so I won't ask you for the detailed worksheets.

But I do have a question about one element of this summary, and that's the account 1908, buildings and fixtures, and it relates to your new head office building. I would ask you to confirm that the value of that building is found in account 1908. Is that correct?

MR. REIMER: That is correct.

MR. SIDLOFSKY: Does that mean you are applying a 4 percent depreciation rate to that building?

MR. REIMER: That is not correct.

MR. SIDLOFSKY: Okay. What rate are you applying -- and I understand, based on your answer before, that with componentization things may have changed. But we would like to know what rate you are applying to that building because 4 percent, frankly, seem as little high. It suggests that your building is only going to be used and useful for 25 years.

MR. REIMER: Some of the arguments that we have made in prior cases for buildings in remote locations, 25 years is actually fairly reasonable estimate. In this case, there is a range of amortization rates that are used for the building. I believe the bulk of it would be -- and again, this should be in the notes to the financial statements. I believe the estimated useful life of that building is more than 25 years.

MR. SIDLOFSKY: So while the building is in that account, it's not a 4 percent rate that's been applied to it?

MR. REIMER: That is correct.

MR. SIDLOFSKY: Can I just take you to your response to -- actually, I will take you to page 160 of the compendium. And you say in part N to your response that account 1908, buildings and fixtures, contains buildings and fixtures not part of the station, such as garages, office building, et cetera. This account 1908 does have a rate of 4 percent shown on the schedules. But you are also looking at any way of 20 too 40 years of amortization because of componentization; is that right?

MR. REIMER: That is correct. I should just clarify that there's two building accounts, 1708 as well as 1908. 1708 would refer to the buildings actually at the stations.

MR. SIDLOFSKY: And that's where you are using 40 years, or a 2 and a half percent rate?

MR. REIMER: It's a range, yes.

MR. SIDLOFSKY: Again because of componentization?

MR. REIMER: That is correct.

MR. SIDLOFSKY: Do you have any way of providing the rates for the various components of the building, the office building?

MR. REIMER: Yes.

MR. SIDLOFSKY: Could you undertake to provide those, please? I assume you don't have them on hand.

MR. REIMER: No.

MS. DUFF: Just on that before we take this, how does this relate -- and if not, let me know -- to undertaking J1.4, where they have agreed to advise the depreciation rates they will be using for the components of the -- oh, sorry, that's the line.

MR. SIDLOFSKY: Yes.

MS. DUFF: So similar to that capital expenditure, which was the transmission line, the 80 kilometres, you would like a similar analysis on the same basis for the building?

MR. SIDLOFSKY: That's correct.

MS. DUFF: Okay, thank you. I am just catching up.

MR. REIMER: Yeah, the notes in our financial statements -- for example, buildings are 20 to 40 years, so some components we estimated the life to be. And again, I can give solid assurances that all of our depreciation rates are -- align as close as possible to what the Board has published.

MR. SIDLOFSKY: But I assume you are prepared to give that undertaking to provide the rates?

MR. REIMER: Yes.

MR. SIDLOFSKY: Thank you. So that will be undertaking 2.1, thank you.

UNDERTAKING NO. J2.1: TO PROVIDE THE DEPRECIATION RATES FOR THE CAPITAL PROJECTS

MR. SIDLOFSKY: I have some questions on your cost of capital, and specifically on your capital structure and debt rates.

First I will start by taking you to page 180 of the compendium, and that's an extract from your application, specifically Exhibit 7, tab 1, schedule 1, page 2. And at that, page you provided a table highlighting your long-term debt that you held at the end of 2015. And the weighted average long-term debt rate on an actual basis is 5.11 percent, and that's what you applied in your calculation to the cost of capital using the OEB's deemed capital structure; is that correct?

MR. REIMER: Yes.

MR. SIDLOFSKY: Would you be able to provide an update to that Table 771A showing the actual long-term debt held at the end of 2016?

MR. REIMER: Sure.

MR. SIDLOFSKY: I assume it's changed compared to what's shown in the table, is that right?

MR. REIMER: The only thing that would change would be the outstanding principal as at year end 2016; everything else stayed the same.

MR. SIDLOFSKY: And you don't have those figures on hand, do you?

MR. REIMER: I most likely do, but --

MR. SIDLOFSKY: It's okay. I am just trying to help you avoid an undertaking. But if you can provide it, I would like you to undertake to do that.

MR. REIMER: I can give you an undertaking for that. You do have the 2016 audited statements in the evidence that would have these amounts. They just would not have the interest payments broken down by facility. The outstanding loan amounts would be in the statements.

MR. SIDLOFSKY: I think I would like the breakdown, please.

MR. REIMER: Okay.

MR. SIDLOFSKY: Thank you. That will be undertaking J2.2.

UNDERTAKING NO. J2.2: TO PROVIDE AN UPDATE TO TABLE 771A SHOWING THE ACTUAL LONG-TERM DEBT HELD AT THE END OF 2016

MR. SIDLOFSKY: And would you happen to know, or can you provide Five Nations' actual debt to equity ratios for each year of 2010 to 2016, and your current debt to equity ratio?

MR. REIMER: It's contained in the evidence, the proposed scorecard.

MR. SIDLOFSKY: Okay, thank you for that. Your actual long-term debt rate at 5.11 percent is higher than the OEB's 2016 deemed debt rate of 4.54 percent and the 2017 deemed debt rate of 3.72 percent.

Could you provide some explanation as to why your interest rates are significantly higher than the Board's deemed debt rates?

MR. REIMER: I can only speak to the financing that FNEI was able to achieve, and these are the best rates that we were able to acquire when we went out to market looking for financing.

MR. SIDLOFSKY: Did you go do multiple lenders when you were looking for financing?

MR. REIMER: Yes.

MR. SIDLOFSKY: Have you made any attempt to renegotiate your long-term debt with your lenders?

MR. REIMER: No.

MR. SIDLOFSKY: Any reason for that given that rates are -- market rates are significantly lower at this point?

MR. REIMER: We don't anticipate because of the small amounts relative to the size of the -- the -- for example, Manulife, the relatively small amount of financing that we have in place, we don't anticipate them renegotiating the rate down.

MS. DUFF: I just have a question, Mr. Sidlofsky. With respect to the debt equity ratios that are on the scorecard, have Board Staff verified that those numbers correspond -- well, I should ask you. Those numbers, do they correspond to your financial statements, your audited financial statements, those ratios? I am just looking at 2011, '12, and '13.

MR. REIMER: To the best of my knowledge, yes.

MS. DUFF: So you are taking current -- oh, just long-term liabilities divided by your equity? I didn't get those numbers, so I just -- if you have done the math I trust that's correct.

MR. REIMER: Yes, it's based on the spreadsheet that has all the actual -- the actual audited numbers in it.

MS. DUFF: Okay, thank you very much. Sorry to interrupt.

MS. FRY: Let me interrupt for a second. So your long-term debt rates, are those fixed rates or are they floating prime plus X?

MR. REIMER: They are fixed. The only one -- they're fixed over the term of the loan with the exception of the Bank of Montreal, the mortgage. There we renew every five years. So there is a possibility of the interest rate fluctuating at renewal. But the two other facilities are fixed for the entire term.

MS. FRY: Fixed, okay. So it's not a prime plus so many percent.

MR. REIMER: No, no.

MS. FRY: Okay.

MR. SIDLOFSKY: Thank you. I am going to move on now to a few questions about your position on the right to earn an ROE in the same manner as a for-profit utility. And I am going to try to stay away from issues that are really more suited to argument. I am sure Mr. King will have some comment on this in his submissions, and I imagine Staff will as well.

But I am going to go through a few facts or a few assertions that you have made in your application, and I have a few questions about those. Five Nations was incorporated as a not-for-profit corporation without share capital under the Canada Corporations Act, and you recently continued it under the Canada Not-For-Profit Corporations Act; correct?

MR. REIMER: That is correct.

MR. SIDLOFSKY: And your overall position on this issue is that although Five Nations is a not-for-profit corporation it should earn a regulated return in the same manner as for-profit regulated utilities.

MR. REIMER: That's correct.

MR. SIDLOFSKY: And as we have discussed previously, in the most recent decision for Five Nations, which is in 2010, the OEB applied a reserve fund framework; correct?

MR. REIMER: That is correct.

MR. SIDLOFSKY: And if I take you back to page 40 of the compendium -- I will just give you a moment to get there. In the last paragraph on that page -- and this is from the Board's previous decision, the 2010 decision on your revenue-requirement application. The OEB noted that a similar reserve fund approach was applied to Attawapiskat Power Corporation; correct?

MR. REIMER: That is correct.

MR. SIDLOFSKY: And are you aware of whether a similar reserve fund framework applies to Kashechewan and Fort Albany Power Corporations?

MR. REIMER: Not at this time.

MR. SIDLOFSKY: Okay. And for Five Nations and Attawapiskat the OEB has previously decided that it's not appropriate for a not-for-profit company to earn a return in excess of amounts necessary to fund established reserves. I just have a few questions in that area.

There's no parent company that owns shares in Five Nations.

MR. REIMER: No.

MR. SIDLOFSKY: The three LDCs, Attawapiskat, Fort Albany, and Kashechewan, are the members of that corporation.

MR. REIMER: That is correct.

MR. SIDLOFSKY: And there is no actual shareholder equity; correct?

MR. REIMER: Technically that's correct.

MR. SIDLOFSKY: And the equity that's shown in Five Nations' financial statements has been generated through retained earnings; correct?

MR. REIMER: That is correct.

MR. SIDLOFSKY: And has any of the equity been generated in any other manner, grants or any other way?

MR. REIMER: No.

MR. SIDLOFSKY: And would you agree that an ROE is granted to utilities to ensure the financial viability of the utility and to ensure necessary capital is being attracted to and maintained within the utility?

MR. REIMER: Actually, can I add to my -- the answer I just gave about no?

MR. SIDLOFSKY: Absolutely.

MR. REIMER: When you refer to equity, as I mentioned several times yesterday, those three First Nations did work with the federal government to provide $33 million that went to purchase assets. So while technically it's not shown as equity, this is not contributed capital from a customer, this was actually an investment in FNEI. So I just want to make that technicality clear.

So technically it doesn't show up as equity. However, it was an investment from the communities in the company.

MR. SIDLOFSKY: And that's part of your rate base, though, isn't it?

MR. REIMER: No.

MR. SIDLOFSKY: It's not part of your rate base.

MR. REIMER: It's not part of rate base.

MS. DUFF: So the assets -- so the use of the 33 million, when you received that money or the company received that money and made purchases with that money, both are excluded from your financial statements.

MR. REIMER: That is correct.
MS. DUFF: Thank you.
MR. SIDLOFSKY: So if we -- I am sorry, Ms. Duff, was that it?
MS. DUFF: No, thank you very much.
MR. SIDLOFSKY: So going back to my subsequent question -- and I can ask you again if you'd like -- does Five Nations agree that an ROE is granted to utilities to ensure the financial viability of the utility and to ensure necessary capital is being attracted to and maintained within the utility?
MR. REIMER: To ensure the financial viability, yes, I agree with that statement.
MR. SIDLOFSKY: Both parts of it? Financial viability and attraction of capital -- attraction and maintenance of capital?
MR. REIMER: Yes.
MR. SIDLOFSKY: I am going to take you to page 209 of the compendium. And in this part of the compendium at tab 28, Staff included a copy of the Board's 2009 report on cost of capital for Ontario's regulated utilities. And at the page I have taken you to, the OEB sets out a discussion of the fair return standard and sets out three components that a fair return must meet or a fair and reasonable return on capital should meet.
First, it should be comparable to the return available from the application of invested capital to other enterprises of like risk. That's the comparable investment

standard. It should enable the financial integrity of the regulated enterprise to be maintained. That's the financial integrity standard. And it should permit incremental capital to be attracted to the enterprise on reasonable terms and conditions; that's the capital attraction standard. Do you agree, first of all, that the fair return standard is the principle used in setting cost of capital for rate-regulated utilities in Ontario?

MR. REIMER: Yes.

MR. SIDLOFSKY: Now, one of the matters that you discuss in detail in your application is that not-for-profit corporations are allowed to earn revenues in excess of costs. And while they can't earn profit for distribution to members, they're permitted under law to earn revenues in excess of costs without breaching corporate or tax law principles or losing their tax-exempt status. The main obligation of a not-for-profit is that it operates in a manner that's consistent with their corporate objects and use any funds generated to further their purposes.

Would you agree that that's a fair summary of your position?

MR. REIMER: Yes, that's a fair summary. I would also add that we have always operated as any other regulated utility in the province. We expect to be treated no different.

MR. SIDLOFSKY: Can you advise whether there have been any challenges to Five Nations' not-for-profit status in the past that you are aware of?

MR. REIMER: There are been none.

MR. SIDLOFSKY: And that's throughout the time when you have been earning revenues in excess of costs?

MR. REIMER: That is correct.

MR. SIDLOFSKY: Now, you also suggested that U.S.-based non-profit regulated utilities earn a reasonable return, largely calculated based on the times interest earned ratio, or the TIER method, in addition to the costs incurred to provide services. And you've stated that this is instructive in determining the approach to cost of capital under Canadian law.

The evidence you provided is largely related to non-profit co-operatives, and I am going to preface my questions by saying if you feel that this is more a matter for argument and that you are not in a position to answer these questions, I am happy to leave it to argument. But it is part of your evidence, so I would like to ask you the questions in any event.

MR. REIMER: Go ahead.

MR. SIDLOFSKY: As an example, I am going to take you to -- sorry, I am actually going to just refer you to Exhibit 7, tab 2, schedule 1 of your evidence. I don't think I need to take you there. I am hoping my question will give you enough context. But you referenced the Southern Maryland Electric Co-operative Inc. in your evidence -- and again that was at page 13 of Exhibit 7, tab 2, schedule 1. And Staff were able to find a more recent rate filing for that co-op.

We've reproduced testimony related to that rate case, and I will take you to page 229 of the compendium for that. And specifically -- sorry, if you can bear with me for just a moment.

I am going to read you an extract from that, just a little up the page, if I can just ask Staff to scroll up a little bit on the screen, thank you.

There's a statement in that testimony that says this: "In a co-operative utility, each member belongs to the co-operative for the primary purpose of receiving electric service. Each member contributes to the capital structure through retained patronage capital. In a co-operative utility, each member has an equal interest in the co-operative. Also, in the event that revenues received for service to members is above the cost of providing service, this revenue is returned to the members as capital credits. There are no non-member investors seeking profit or control. In fact, there is no profit, as is the case with investor-owned utilities."

Is that your understanding of a typical arrangement for a co-operative utility?

MR. REIMER: That's what the testimony states.

MR. SIDLOFSKY: And my understanding from that is that for U.S. co-operatives, revenues in excess of costs are returned directly to the customers that are paying those costs, and those are the co-operative members. Is that your understanding as well?

MR. REIMER: If I could, I would like to direct you to the bottom of the page.

MR. SIDLOFSKY: Certainly.

MR. REIMER: It's sort of cut off. And this, I think, is key to what FNEI has been trying over the past seven years to correct, the 2010 with respect to mistakes that were made in that order.

Expectations of co-operative members can be considered to be the same as the expectations of investors. The expectations of our individual community residents are that they receive some benefit from Five Nations Energy. We have held back on doing anything with our corporate social objectives precisely because we wanted to follow the regulators. So what we did instead is we invested all of our earnings back into plant property and equipment, hoping that at some point the Board could be able to understand that just because we have a certain capital structure does not mean we don't have other objectives, we don't have other issues that we would like to do with this company.

So that's I found this -- the expectations of our community residents, which through the chain of electing chief and council who elect, you know, select the board of directors for the LDCs, the board of directors then in turn select our directors, through that chain right from the start, FNEI has always been to provide for the needs of individual customers.

MR. SIDLOFSKY: Perhaps we could step back for a minute, though. The members of the co-operatives are the consumers who are actually paying for electricity service, is that correct? Is that your understanding of the co-op structure?

MR. REIMER: I grew up in Manitoba and we bought all our groceries at a local co-op, so yes.

MR. SIDLOFSKY: And when this proceeding is finished, eventually Five Nations' revenue requirement will be built into the uniform transmission rate, correct?

MR. REIMER: That is correct.

MR. SIDLOFSKY: So that you aren't actually recovering your revenue requirement from the members of your corporation.

MR. REIMER: With respect to the shareholders of Hydro One prior to its sale, the individual taxpayers of the province, whether or not they were serviced by Hydro One, they were still paid a return on equity. Why is it any different for Five Nations?

MR. SIDLOFSKY: But maintaining your parallel with the -- or your analogy, sorry, with the co-op structure, if the members of the co-op, that is the consumers who use that system, have paid too much at the end of the year for their electricity service, they get some of that money back.

In Five Nations' case, all electricity consumers in the province are effectively paying -- including your members as transmission customers of Five Nations are paying for Five Nations' revenue requirement, correct?

MR. REIMER: That is correct, as with any other transmitter that's part of the transmission system pool.

Why are you making a distinction for Five Nations? Sorry, I am not sure if I can ask questions.

MR. SIDLOFSKY: I certainly sense -- I am well aware of your position on this. But my question is simply related to your use of the co-op structure as an analogy to Five Nations' objectives here.

MR. KING: I think I can be of help. At tab 27, the long excerpt from our evidence on non-profit corporations, if it looks like an original tax opinion that has been converted into evidence, it's because that's what it is. We did, through the past history of Five Nations, look for how non-profit corporations were treated from a rate-setting perspective, and this goes back to, you know, embarking on finding a utility that -- a non-profit utility that was rate-regulated, we started that even before the line was constructed. It goes back to our very first rate case, and we filed evidence on the tier methodology there.

The utilities, the non-profit utilities that we came up with that we were able to find, were in the U.S., and they were cooperative models, and that is sort of the best we could come up with. We are not a co-op, obviously, right, and it's not a perfect analogy, because we also serve a diamond mine, right? You wouldn't normally see a U.S. cooperative serving a diamond mine in addition to their members.

So it's simply the best sort of proxy we came up with in terms of finding an analogy for how a non-profit utility might be treated from a rate-setting perspective.

MR. SIDLOFSKY: Thanks for that, Mr. King. And this might actually be the time when I suggest that we can deal with other issues related to that in argument. I am not sure that the witness panel would have much more to add on that, so I am going to move on to another area, if you don't mind, Panel.

MS. LONG: Just before you do, Mr. Sidlofsky -- am I on? The question, Mr. Reimer, you had mentioned that you wanted to further some objectives. Are you able to elaborate on what you meant by that?

MR. REIMER: If you refer to the presentation that I made yesterday, as well as on the bottom of page 183 in the compendium, tab 27, these are the objectives that we are referring to. The social, economic, civic welfare development, we have yet to come up with any formal plans or any process. We have been trying to, for lack of a better word, correct the 2010 decision.

MS. LONG: Well, I am trying to understand what you mean by that, so some examples would be helpful for this Panel. I mean, I understand the concept, I think, of what you are saying, but I would like to understand some concrete examples of what that would translate into.

MR. REIMER: The only thing I can say is that -- and I say this with deep respect and humility -- is that I don't find the OEB asking any of other utilities -- other market participant shareholders what they plan on doing with their dividends. So I could give you all sorts of examples, but at the end of the day that, again, with respect, should not be the purview of this tribunal. What any other shareholder does with his or her dividends is entirely up to that particular shareholder. So I am not sure how to answer that question.

MS. LONG: Well, I think you have. You have said your position is that I guess what your position is is with respect to dividend creation. This Board is to look at what your revenue requirement is. If there are dividends falling out of that, that's within your purview and nothing that the OEB should be concerned about; am I characterizing that properly?

MR. REIMER: Yes, and I don't want to appear rude or disrespectful. What we will be constrained by, however, is that in the objects it states specifically "for the general benefit and for the purpose of providing electrical power and other utilities to the communities of Attawapiskat", our communities, so it is going to be narrowly focused on assisting with the infrastructure of these communities. You know, that's the restriction within our objects. And so that is one assurance that we can give: We will hold to these objects. Specifically, you know, we haven't really considered what we will do.

MS. LONG: Thank you.

MS. DUFF: If I could just ask one more question before -- you said, Mr. Sidlofsky, you were going on to a different topic. What was that topic?

MR. SIDLOFSKY: Well, no, it's in a related area. It's still part of the ROE. It's just a separate line of questions. I had actually planned to ask the panel about proposed uses for revenues in excess of cost, so I am glad Ms. Long shortened my cross-examination there.

But, no, if you have a question that you'd like to go ahead with now...

MS. DUFF: I will let you proceed.

MR. SIDLOFSKY: Okay.

MR. REIMER: With respect to the non-profit, there is one thing that we -- I have touched on briefly in the opening presentation, and it's one thing that it's difficult to put into evidence. It's not a mechanistic or a formulaic -- it's just the reality of the environment, the social, the political, the day-to-day people's expectation and environment that we work in.

And if I could beg your indulgence, I will ask my colleague Pat here to speak just on some of the underlying reasons why FNEI is so determined to maintain its non-profit status.

MR. CHILTON: If you bear with me just -- I want to explain a few things. Well, I am originally from Moose Factory, but my membership is actually from Kashechewan, so I have a lot of relations up there. I have been travelling up and down the James Bay coast and the Hudson Bay coast since 1981. I have worked there in various capacities as the district superintendent of band for Indian Affairs and for the -- as district manager for Indian Affairs. I was the executive director for the tribal council. I was the hospital and zone director for the federal government, Health Canada, dealing with a lot of the issues up there.

And when we started talking about transmission on the coast in 1981 when I joined Indian Affairs and reading through the files a lot of the issues there were to deal with hydro development or any type of provision of electricity up there. It talked a lot about -- back in the files when I was reading them I remember when I joined Indian Affairs and reading those files late at night, just to bring myself up to speed just like I am trying to do with energy, trying to bring myself up to speed with what the issues were up there, a lot of the issues stem from the lack of reliable electricity.

Indian Affairs at that time, through some of their engineers, said it wasn't possible to put a line -- transmission line up there. Along comes my brother Ed, who is -- engineering background -- says it is possible. It has been done before. It can be done.

So they looked at different ways of doing that, right, and Rod provided some of that in his presentation yesterday. A lot of the issues up there. But doing that, there was a lot of -- there was a lot of other issues that had to be dealt with, and that was basically the capacity of the First Nations actually govern, manage, manage, and including their finances.

A lot of the issues stem to this day on their ability to do that, because what you find with the First Nations, especially remote isolated communities, a lot of the people that go out for education do not return. And when they don't return to become chiefs, they don't return to become counsellors, they don't return to become the accountants, so they rely basically on outside help.

But at the same time what you find is that a lot of the people in these communities depend a lot on the outsiders at high cost, at very, very high cost, whether it be in economic development, being technical, being financial, and for just basically -- so their inability to attract people and retain them is basically -- you know, all those people are in urban centres. A lot of those people are non-Native people. People like myself, for instance, who was born in Moose Factory, I left Moose Factory in 1995 specifically for the reasons for better education for my kids, my boys. I have five sons. They all are doing well, but a lot of the people that remain in the communities, grade eight, grade ten, grade 11, and some -- and they stay there. A lot of the people that do leave don't come back.

Now, when it comes down to things like the management or the expectations of an organization like the Five Nations Energy, who has been very successful over the last 20 years-plus, even selling the idea of transmission line, even when you are dealing with people who expect that their treaty rights will be protected by the federal government and also by the province, the treaty -- because every time you talk to them it will be, how is this affecting my treaty?

Even the crossing of the land for the transmission line, that was a major issue, and Rod gave a good indication of where that came from, you know, and how the women actually took charge of that and saying we need this, we need this.

The other thing that really, really affects it is the fact that their inability to manage -- I am sorry, not inability, but their lack of funding, the way they spend their funds and where they direct their funds, it becomes really an issue with First Nations and their organizations.

The big issue is creating corporations. When we set up the founding executive director of the tribal council in 1985, one of the things for that was to transfer the Services that the Department of Indian Affairs and Health Canada provided up there managed to be transferred to First Nation control.

The other things we set up there was a for-profit corporation called Pasico Development Corporation. We set up a number of other not-for-profits. The not-for-profits still exist; the for-profits don't exist any more. What happened there was and a good example of Pasico Development Corporation, which is a regional economic development corporation, they started up some projects, and because of the lack of management, the financial management, and also because of the political instability, it failed.

There is another one that just started up just recently, three years ago, Mushkegowuk Development Corporation. There is no investment whatsoever. Although it allows for investment from First Nations, there is no investment because First Nations don't have their money, or they don't trust the company if it's for profit. What is going to happen with their dividends.

I sat on a board called Cree West. Cree West was set up because of the joint ventures that came out of the DeBeers diamond mine. What happened there was we joint-ventured with Air Creebec to provide transportation from Timmins and Moosonee and Attawapiskat into DeBeers on a regular basis, almost on a daily basis. That's how we made our money by our money, by joint-venturing with them. I was also employed full time, but I was on the board doing this.

What happened there was, as soon as First Nations run into difficulty, they needed money -- because some of those First Nations are in 10, 11, $12 million in debt. They need money like cash, a real good cash flow right up front. They saw money, for instance -- in one particular case, they saw money sitting there, just under $110,000. They demanded that money. Rather than Cree West reinvesting it into its business, they wanted that money like right away. Basically forced into a position where Cree West eventually had to do it, and ran into some very severe cash flow issues because of that.

Then what happened after that, as soon as the contract came up for Cree West and Air Creebec, instead of allowing Cree West -- who they owned -- to submit another proposal for -- you know, just to renew the contract, two of the First Nations that owned Cree West actually found another airline because they saw money in it, right; they saw money. They partnered up with another -- with two airlines. One community partnered up with a firm from Sioux Lookout, and another one partnered up with a firm from Montreal to bid against their own -- to submit a proposal against their own company.

And what happened was, of course, it drove the -- it allowed DeBeers to really nickel and dime everything, and eventually we wound up with getting the contract, but at the same time it was $450,000 less than the previous contract. The revenue and everything changed.

So we have those issues with for-profit companies, when they see instant access money, instant money to access, right.

In Five Nations' case, we have a request on file from one of the First Nations where they are requesting one-third of the assets of Five Nations Energy. If it was a for-profit -- and we also have some people knocking on the doors back even before I came, looking to buy Five Nations Energy. You see, if we are for-profit and the First Nations were able to see that they are able to make quick money, basically it would be sold off. Either communities will sell off their share, or the First Nations themselves in total, or a company would come in and just basically come over.

We have to protect Five Nations Energy, and we will -- and there is no doubt in my mind, given my experience up there and given the experience of many others that I have spoke to about this particular issue since I came do Five

Nations Energy, that we will lose Five Nations Energy. We will lose any type of control.

The only way we can maintain reliable services up there that are owned by First Nations is to remain not-for-profit. If we go for profit, we could say good-bye basically in a few years, maybe even sooner, to Five Nations Energy as it exists now.

So these are major issues that we face, and real issues. I know that there are legal issues, legal arguments that we can make as well. But the real issues that -- even my brother that I talked to about this, he worried about this from the very beginning to two or three days before he passed away. And two or three days before he passed away, he was still concerned about Five Nations Energy remaining in the hands of the First Nations as a not-for-profit. He was barely audible when he was talking that we had to protect it.

And when the job came open for Five Nations Energy as CEO, I saw it as a way to maintain that legacy that he had. I had an opportunity to apply for the job back in 2010, '9, and I did apply. But I withdrew my application because it conflicted, I thought, with my brother's existence there as a project manager; I didn't want to see that.

But once he passed away and this came open, my job -- one of my main jobs -- and I have been told this by many, many people, particularly people from in political positions and from legal people, they are saying, number one, OEB has no business doing that. It's intrusive and very paternalistic; as a matter of fact, they even said racist. We have to protect as it is.

So I guess what I am trying to do is protect Five Nations Energy. We have all the legal arguments. We can be able to manage the services, provide reliable service, and even grow and provide better services. We should be able to do that.

I guess what I am -- you know, what we are looking for is a way to do that, to maintain reliable services, have it remain as a not-for-profit, and continue providing the services and go from there.

We have another arm -- back in back in March 31st, 2000 -- in 2000, the First Nations -- well, Five Nations Energy at the time saw that there was going to be in need for some for-profit. So they created a shell company in 2000, and it's Five Nations Development Inc. So we see that and we kept that as a shell for all of these years and we are ready to activate it for other matters, because Five Nations Energy is viewed as many, many corporations, they see Five Nations as a very well run, very well managed, very well governed entity that can be trusted with the experience that they have, because no other First Nations organization in the northeast, probably in Northern Ontario, is as well run and well managed as Five Nations Energy.

We get the best people. You can see from this person who is two-thirds time to handling all of the finances and all of the corporate issues for the last 20-some years. We have other people like Vladimir, who is our operations manager and who is very good technically. We have very good people within, and there is only right now nine of us; it will be ten as of next week.

We are a very, very small organization trying to provide services. As soon as we become for-profit, you are putting us in danger of losing that. How do we manage that, I guess? Where does that put us?

MS. DUFF: Can I ask you just two questions on that? The Board, in establishing your revenue requirement, it is -- understand, we would never -- it's not within our purview to tell you what form your corporation is. So just when you -- the way you were talking there, it was implying that the Board would with tell you to go for-profit; is that a concern of yours?

MR. CHILTON: Yes.

MS. DUFF: Okay. All right, thank you for explaining that. And I want -- I was interested in your governance structure. Is this an appropriate time I can ask you?

MR. CHILTON: Sure.

MS. DUFF: I look at -- the basis is your financial statements, which they have these funds. You have already got a general fund, and a capital fund, and I can see, you know, over the years, money moving in and money moving out of those.

When decisions are made -- if you want, I can pull up a reference, but we are just having a conversation here. When decisions are made to repay debt or to make certain investments, does that go to your board and then you vote on how you move money out of your general fund into perhaps your capital fund and make the expenditures on the property plant and equipment that you just referred to.

MR. CHILTON: The recommendation, it comes basically from our finance person --

MS. DUFF: Yes.

MR. CHILTON: -- from our auditor. It goes to the -- that we take to the finance and human resource committee, which -- and then take it to the board for approval.

MS. DUFF: You do. So those transactions, prior to them being authorized or part of the requirement to make the transaction is approval of your board. And the transactions you have been making for the last five years since the last rates case, I would agree. I see them as being heavily capital-intensive property plant and equipment, but that you were saying -- that was an objective decision of yours. You wanted to do that. Could you explain that a little bit more? And then just that that was -- it's not just by chance. That was something that you wanted to do, and how you would see that changing, you know, going forward.

MR. CHILTON: I am going to pass this question on to Rod.

MS. DUFF: Well, I mean, but you are a voting member of that board of directors, though, are you not?

MR. CHILTON: No, I am not.

MS. DUFF: Okay.

MR. CHILTON: I am the chief executive officer. We have a president, vice-president, secretary, treasurer. I am the chief executive officer. And eight directors, yeah.
MS. DUFF: Yeah. Okay, so going forward, how would those decisions -- is there any change to how you would approach decisions of monies moving in and out of that general fund and capital fund? Would you need another fund? Would you have another fund called, you know, community fund? I am just trying to picture how this governance structure is going to work going forward.
MR. REIMER: As Pat said, everything would ultimately be a decision of the board. We have yet to work out the mechanism. I can anticipate there would be a separate fund, you know, that the board would at the end of --
MS. DUFF: Your board. I think we need a little bit of clarification on words here, yes, please.
MR. REIMER: That the FNEI directors -- I will refer to the FNEI directors -- the FNEI directors would then make a decision based on the previous year's financial performance, the proposed -- the upcoming capital investment recommendations, and then -- like, in all honesty we have yet to really wrap our heads around how we would begin to go forward with the objectives. Some communities would most likely want to invest their portion in more infrastructure.
MS. DUFF: So when I look at your equity right now, the equity section of your financial statements, you seem to have five funds. You have a funding structure. And two

of those funds were the funds established directed by this Ontario Energy Board, although there is no money in them, because they are the shells of that decision. And then you have three other funds that you are using, the general fund, the capital fund, and then this insurance, which I take it kind of is collateral for your loan.

But -- so those two funds that were not being used, your board of directors of Five Nations is very aware of the existence of those, that they are not funded, and they look to those other -- could you characterize how they look to the characterization of the remaining three funds and the money that's there? How do they view that money?

MR. REIMER: Perhaps I could draw your attention to note -- I am looking at the --

MS. DUFF: Let's do the 2014/'15, because that's the most recent financial statements.

MR. REIMER: Okay. The note should be identical to what I have here.

MS. DUFF: Okay.

MR. REIMER: It's part of significant accounting policies, Note Number 2.

MS. DUFF: Okay.

MR. REIMER: And just under D there is Note E, fund accounting.

MS. DUFF: Yes, I have read all of this, yes.

MR. REIMER: Yeah, so it's more of an accounting exercise.

MS. DUFF: Yes.

MR. REIMER: And then that gets reported to the board, and the accounting exercise is based on decisions that the board has made during the course of the year. And this is -- just kind of reports the activity as of that fiscal period ending. This is part of the non-profit, like, financial statements for non-profits.

MS. DUFF: And that's where Mr. Chilton provided the extra information regarding, it's not just an accounting exercise. In fact, I was asking questions about the governance regarding the decisions that lead to those accounting entries, and I think he explained that well.

I did have a question, one more, while we are looking at this. If you go to utility equity within any financial statement, and I was looking at the last one, and in here it's stated, you know, clearly stating that pursuant to this OEB decision you have got these two other funds, and you're indicating that -- the dollar amount that was approved. However, in there, and I will read this:

> "The policies for funding and accessing these reserves have been established and approved by the company and are subject to OEB approval. Application of the policies will commence upon approval of the OEB, and once fully funded..."

Now, I am referring to the two accounts that the Board directed:

> "...once fully funded transmission rates will be reduced by approximately $1 million annually."

So your board of directors, Five Nations, is aware of those statements and that those two funds right now are not being utilized, have not been funded; is that correct?

MR. REIMER: That is correct. And as any accounting firm will tell you, these statements need to reflect fairly and materially. There is a decision on the books, right? The 2010 order that states precisely that. This is what he has to -- this is what the auditor needs to put in the statement.

MS. DUFF: I am not -- that's a fair comment.

MR. REIMER: Yeah.

MS. DUFF: It's just to go back to -- but so your board is fully aware of these statements, they are -- you have your audit committee or -- reviewing. I just wanted to get a better sense of, you know, they are reviewing these statements and approving, you do have -- and especially, I guess, another OEB decision, I take it, would be reviewed at one of these meetings; is that correct?

MR. REIMER: Yes. We actually, from the time that the first construction loans were entered into, we have actually prepared quarterly reviewed statements. So they are not just reviewed on an annual basis, they are reviewed on a quarterly basis and approved by the -- first, like Pat said, it goes to the finance and HR committee, which acts in effect as the audit committee, and then goes to the full board of directors. So these are reviewed and discussed on a quarterly basis.

MS. DUFF: And sitting on your books right now is, you know, about $25 million that are -- that's in these funds that you have to access; is that -- how would you characterize the balances in those funds that are on your statements? I don't want to put words in your mouth, so I just wanted to hear how your board of directors considers, you know, how they could access and use the money that's currently in your utility equity section.

MR. REIMER: I guess we should make the distinction between fund accounting for balance sheet for the equity portion versus actual funded accounts. The only -- in that fund accounting note, the only actual reserve that is funded is the insurance reserve. So this basically kind of reflects the activity over the preceding years.

There is no really -- there are no funds that are available for the board to -- for the FNEI directors to disburse. It's merely -- it's showing over time we have invested this much in capital assets, we have put this much aside for insurance reserve.

So it's more of a -- it's more of a reporting mechanism. The actual day-to-day decisioning (sic) are more on when we look at our cash-flow forecast or we look at -- or, like, the annual budget, looking forward to the following year, and the operation maintenance requirements, the capital investments that are being recommended.

MS. DUFF: I am going to repeat what I think I just heard you say. The insurance reserve fund, the one of $4 million, that is the only amount that's truly set aside in --

MR. REIMER: In cash.

MS. DUFF: In cash.
MR. REIMER: Yes.
MS. DUFF: The other accounts are not viewed that way.
MR. REIMER: No.
MS. DUFF: Okay, thank you very much. Those are -- I hope that wasn't disruptive to your cross-examination, but I did really want to understand the governance and following up on the information that Mr. Chilton provided.
MR. SIDLOFSKY: Thank you. Ms. Duff, I am about to move into some questions about debt coverage ratios. I wonder if this is a good time for the morning break.
MS. DUFF: Oh, yes, please, I -- that would be a very good suggestion. So it's ten after now. At 25 after we will return, thank you very much.
--- Recess taken at 11:11 a.m.
--- On resuming at 11:37 a.m.
MS. DUFF: Please be seated, I apologize for the delay; the Panel was conferring.
Mr. Sidlofsky, if you could please proceed with your cross-examination.
MR. SIDLOFSKY: Thank you. As I said before the break, I am moving on to some questions about debt coverage ratios. So I am going to take you to page 204 of the Staff compendium.
You said there that -- sorry, this is an extract from Exhibit 7, tab 2, schedule 1, specifically page 21 and -- sorry, 22 of that exhibit. You stated that if you were no longer entitled to earn revenues in excess of costs, you

would be immediately offside your debt coverage ratios on your credit agreement and subject to repayment obligations that are greater than your interest costs.

Now, I understand your general position on the reserve approach, but I would like to ask you a few questions about your ratios, if you don't mind.

The ratio of earnings before interest, tax, depreciation and amortization to debt service, as set out in your credit agreement, is to be no less than 1.2; is that correct?

MR. REIMER: Yes, that is correct.

MR. SIDLOFSKY: And in your evidence, you originally stated that if the ROE were to be eliminated from your revenue requirement, your debt coverage ratio would fall to 0.81, is that right?

MR. REIMER: That's correct.

MR. SIDLOFSKY: And that evidence -- my understanding is that that evidence was with respect to Five Nations' situation after its last rates proceeding in 2010; is that right?

MR. REIMER: That is correct.

MR. SIDLOFSKY: And in your response to part E2 of interrogatory 7-Staff-33, and that's at page 218 of the Staff compendium, you discussed your current situation. And in that discussion, you said that it's -- that your current debt to coverage ratio is 1.68, correct?

MR. REIMER: That is correct.

MR. SIDLOFSKY: And if the application is approved as filed, it rises to 2.42 percent, is that right?

MR. REIMER: 2.42 to 1 --

MR. SIDLOFSKY: I'm sorry, not percent; 2.42 to 1, thank you. And if no ROE is approved as part of the current proceeding, your ratio would be 1.54 to 1?

MR. REIMER: That is correct.

MR. SIDLOFSKY: You recently filed an update to your response to interrogatory 7-Staff-33, and in part E3 of that response, you stated that if the return component is removed, the debt coverage ratio would be 1.48 to 1; is that correct?

MR. REIMER: For what time period?

MR. SIDLOFSKY: Sorry, just for the Panel's benefit, that was Exhibit K1.2.

That would be -- well, your statement here is, for example, using the application information for the --

MR. REIMER: Okay, yes.

MR. SIDLOFSKY: -- for 2017 test year.

MR. REIMER: Yes, that is correct.

MR. SIDLOFSKY: So your debt ratio would be 1.48 to 1. I would just ask you to confirm, first of all, which debt coverage ratio is correct in the situation where no return component of the requested revenue requirement is granted, would it be 1.54 to 1 or 1.48?

MR. REIMER: 1.48.

MR. SIDLOFSKY: Thank you. And whether we are speaking of 1.54, 1.48, in all of those -- in both of those circumstances, your debt to coverage ratio is still higher than the minimum required in the credit agreement; correct?

MR. REIMER: That is correct.

MR. SIDLOFSKY: And in your response to interrogatory 7-Staff-33, part E3, you noted that the debt coverage ratio is a snapshot in time, correct?

MR. REIMER: Yes.

MR. SIDLOFSKY: So using the forecasts in the application and assuming everything remains equal, if we were to remove the $1.315 million return component from Five Nations' revenue requirement, will FNEI be offside of its debt coverage ratio by 2021? Is that what you are anticipating, according to your response?

MR. REIMER: Yes. This particular ratio is very dependent on the ratio of principal payment versus interest, the principal portion versus the interest portion of our long-term debt monthly payments. As long as those -- as long as the relation to the principal and the interest is pretty well the same, net income has less of an effect on this ratio. As soon as the principal amount, the principal portion of the debt repayment starts to exceed the interest, then it has a much, much greater impact on this particular ratio.

We should keep in mind, however, that a company's risk profile, when viewed through the lens of a Manulife, this is only one specific metric. Not having an ROE would have significant effect, a significant impact on the overall comfort that our senior lenders have with FNEI, regardless of what this specific ratio is.

MR. SIDLOFSKY: When you talk about comfort levels, are you referring to specific contractual obligations, or are you just concerned that your lenders would -- I don't know, would have some sort of vague concerns that you may not be able to meet your obligations?

MR. REIMER: We would become a going concern. The connection between losing an ROE to FNEI's ability to operate would put FNEI in a situation where we would feel compelled to change our capital structure. While it might not -- it might not be a direct order from the Board, it would put FNEI in a situation where we really would not have any other choice.

If we wanted to continue operating, we would then have to change our corporate structure into a for-profit capital in order to -- in order to continue receiving an ROE.

MR. SIDLOFSKY: But to be clear, you haven't really been receiving an ROE up to now. At least as a regulatory matter, you haven't been receiving an ROE. What you have been allowed to recover in the past, let's say on the basis of the 2010 revenue requirement decision, is an amount equivalent to an ROE representing earnings in excess of costs that in the last decision, the Board clearly expected you to be applying to your reserve funds, to capital and operating reserve funds. And once those were topped up, the expectation was that you would return to the Board to have that permitted -- those permitted earnings in excess of costs removed from your revenue requirement.

That's a very long preamble, I guess, to this question, which is: Have your lenders been concerned to this point that you are not -- that you haven't formally been allowed a return on equity? Because my understanding is that you haven't; am I wrong?

MR. REIMER: If it looks like a duck and quacks like a duck, it's an ROE. From the lender's perspective, it's a return on equity. If you look at our ratios, you look at the evidence we filed in the financial model, the deemed equity, the 60-40, that split, that is what the lenders were looking at. They are very well aware of the 2010 order. They are watching this proceeding, keeping an eye on it. They are expecting me to keep them updated on what the results are of this going forward. They have concerns. In their mind it's an ROE regardless of what the specific wording of the 2010 order calls it.

MR. SIDLOFSKY: So even if there is a note in your financial statements or something to highlight the fact that this isn't an ROE, they were still satisfied up to now without the board -- with the board not having granted you a formal ROE.

MR. REIMER: Like I said in my opening, in the opening presentation, FNEI has always been able to work very closely with its lenders to provide a very good level of comfort. They have always had -- how should I put this? We sat down with them and said, "Look, we are working very closely on trying to amend this decision. We will keep you posted. If this does, in fact, become enforced that we will have to do this then we will need to sit down with you and determine what the steps will be going forward."

They have full confidence -- they have always had full confidence in the management and the governance of FNEI to meet FNEI's obligations.

MR. SIDLOFSKY: Even if your debt-to-coverage ratio were to fall in the future, my understanding from your evidence is that the fact is that your lenders have accepted restricted cash deposits as an alternative in the past. I think you mentioned restricted cash -- you discussed restricted cash yesterday.

MR. REIMER: Yes. There was a point in time, as I was trying to explain, as the principal portion of a debt payment greatly exceeds the interest portion, we ran into that shortly after the 2010 decision with respect to the Northern Ontario Heritage Fund. We were nearing the end of the term, the amortization of that facility, and so it was predominantly just principal that we were -- principal of the loan repayment, there was only -- there was a very small percentage of interest. That had a huge impact on this particular ratio.

Your net income already takes into consideration interest expense. However, it doesn't take into consideration the cash that you need to generate in order to make the principal portion of your loan payments. So that had a huge impact on those ratios.

We explained to them that this was a temporary. They understood this was a temporary situation. So to mitigate their risk or to grant them a better comfort level, the covenants did allow for $500,000 to be set aside up until such time that I think there was three consecutive quarters where the ratio went up to 1.9, just going from memory here.

MR. SIDLOFSKY: So that was the $500,000 in secured funds.

MR. REIMER: Yes, they took advantage of this provision in the covenants with the understanding that this was a temporary. What their response would be when they -- when it became a permanent situation, I have no idea.

MR. SIDLOFSKY: Well, I am not sure anyone's suggesting here that that would be a permanent situation. I think you confirmed that you anticipated that you would be offside of your debt coverage ratio by 2021. That also would be the time that you'd be coming back to the Board to rebase based on a 2016 test year; correct?

MR. REIMER: Yes.

MR. SIDLOFSKY: So your IRM period would be 2017 to 2020. Presumably -- I mean, I realize that we are now into 2017, but presumably you would be back to the Board for 2021 or 2022 revenue requirement; correct?

MR. REIMER: That would be my understanding, yes.

MR. SIDLOFSKY: At part -- excuse me, part 4 to your response to 7-Staff-33E -- and it's on the same page -- Staff had asked if a reserve fund designed to hold sufficient funds to make loan repayments in the situation where FNEI is having cash-flow issues would satisfy your lender.

You said, and you actually reiterated, that you don't know if that kind of fund would satisfy your lender?

MR. REIMER: We don't know.

MR. SIDLOFSKY: And I assume you've never asked.

MR. REIMER: No.

MR. SIDLOFSKY: Is that something you could make an inquiry about?

MR. REIMER: No.

MR. SIDLOFSKY: Because?

MR. REIMER: As stated yesterday, we have no intention of implementing any kind of reserve funds.

MR. SIDLOFSKY: So you are simply not prepared to make the inquiry.

MR. REIMER: No.

MR. SIDLOFSKY: Well, I understand your answer. I am going to ask you a couple of questions, and Ms. Long has actually touched on a couple things that I was going to be mentioning, but this is on the use of returns to address other corporate objects of Five Nations. And it seemed clear to me from your responses to Ms. Long that you really don't have a plan at this point for the use of any funds in excess of your costs; is that correct?

MR. REIMER: That's correct.

MR. SIDLOFSKY: And you also were very clear with me earlier today that your not-for-profit status has never been challenged to date.

MR. REIMER: That is correct.

MR. SIDLOFSKY: And when I look at part of your evidence -- it's actually at page 184 of the compendium. That's at Exhibit 7, tab 2, schedule 1, page 2. I will just wait until that comes up on the screen.

At line 11 of that page, you've said that:

> “FNEI has operated for over a decade as a not-for-profit corporation on a tax-exempt basis without any challenge by the Canada Revenue Agency."

Now, up to now, Five Nations hasn't been allowed -- formally allowed a commercial return on equity; correct?

MR. REIMER: We have earned surplus earnings regardless of what the Board has designated those as, but, yes, technically you are correct.

MR. SIDLOFSKY: With respect, that's two different things. You have earned amounts in excess of your costs, absolutely. Up until now, however, the OEB has not granted you an ROE. Am I right?

MR. REIMER: That is correct.

MR. SIDLOFSKY: Okay. And do you anticipate -- what you are asking the Board for right now in addition, obviously, to approval of your revenue requirement is the approval of a commercial rate of return similar to other rate-regulated utilities.

MR. REIMER: That is correct.

MR. SIDLOFSKY: That kind of sums it up in a nutshell; right?

MR. REIMER: Yes.

MR. SIDLOFSKY: And you haven't had that to this point. I understand what you have actually earned. I completely understand that you have actually earned revenues in excess of your costs, but to this point through two decisions from the Board in 2000 and -- excuse me, of the OEB, just to make it clear, in 2000 and 2010, you have not been granted an ROE.

MR. REIMER: All the calculations to determine what surplus FNEI has been allowed to return have been calculated on the basis of a typical utility ROE, the Board-approved ROE rates. While technically in the regulator's documentation it is not called an ROE, yes, you are correct.

MR. SIDLOFSKY: Well, sir, with respect, not only is it not called an ROE, but the regulator's expectation was that you would come back to the OEB to remove that amount that was the equivalent of the ROE, but was referred to as earnings in excess of costs or by other terms.

The expectation was that you would be back to the OEB asking the OEB to remove that element of your revenue requirement, once the reserves were topped up.

MR. REIMER: Yes.

MR. SIDLOFSKY: Okay. So now you're back at the OEB and your request is that you be granted a return on equity; no other name for it, no other restrictions on it, no requirement to come back at a certain time when certain accounts are topped up. You are asking the OEB to grant you a return on equity?

MR. REIMER: That is correct.

MR. SIDLOFSKY: Okay, do you -- first of all, your evidence suggests that that won't put you offside of your obligations as a not-for-profit corporation.

MR. REIMER: That is correct.

MR. SIDLOFSKY: So your evidence is that if you were to earn a return on equity, or if the Board were to grant you a return on equity in the same manner as any other rate-regulated utility, then that would not put you offside of your obligations as -- sorry, it would not affect, adversely affect your not-for-profit status.

MR. REIMER: That is correct.

MR. SIDLOFSKY: Given that you haven't been in -- to date, you haven't been in the position that you are asking the OEB to place you in now, what would your response be if the granting of an ROE were to adversely affect your status as a not-for-profit corporation?

And sorry, before you answer that, let me just say that at this point, the Board has in front of it your evidence, which amounts to your assertion that that status won't be affected by the granting of an ROE.

So what I am asking is what you would do if you're wrong, and if the ROE jeopardizes your status as a not-for-profit corporation, what would you do about that?

MR. REIMER: That a very difficult question to answer because I don't work for CRA, neither am I a tax lawyer. However, we've surmounted innumerable obstacles in the development and ongoing operations of FNEI. We would take whatever avenues are available to us to challenge this with the CRA. It's a hypothetical situation, and that's the best answer I can give you.

I can tell you we are an HST registrant. They see on a monthly basis what our revenue for that month is. We have consistently filed our non-profit, NPO annual returns on a regular basis. There's never been any concerns, never raised any red flags, nothing. We have a spotless record with CRA. That's why we put into evidence what we did. We don't anticipate any issues whatsoever.

MS. LONG: Sorry, just on that point, Mr. Reimer, did you seek, or Mr. King, an advance tax ruling from CRA or have any conversations with them?

MR. KING: No, but we have provided tax legal advice. Our view is, from a legal perspective, from a tax legal perspective, CRA has no interest in how you characterize the amount. And if the Board were to characterize the amount of revenues in excess of costs that FNEI were entitled to earn as an ROE, that wouldn't jeopardize their non-profit status.

MS. LONG: I am asking this question because Mr. Chilton gave a very impassioned description of how he did not want FNEI to become a for-profit corporation, and I guess I am just concerned if there was some adverse impact with CRA taking a different view, obviously that would not be palatable to FNEI. They'd be upset about that. And I guess I am just wondering what would happen if there was an unforeseen consequence.

MR. KING: And again, we didn't seek an advance tax ruling, but in part because we got the tax advice that it doesn't matter how you characterize this amount.

MS. LONG: Would FNEI come back to the Board?

MR. REIMER: Are you asking if we would come back to the Board if CRA would -- the Canada Revenue Agency would take issue with our surplus now being designated as an ROE?

MS. LONG: Yes.

MR. REIMER: Like I said in my response before, we would take whatever avenues would be available to us to challenge that. I mean, as our regulator, at some point you would be privy to -- we would -- I can't really answer that question, if we would come back.

MS. LONG: I guess I am just thinking if your tax status changed, obviously that would be a material impact on your revenue requirement.

MR. KING: At a minimum, there would be a requirement to pay income tax, which wouldn't have -- there is no income tax component in our revenue requirement.

MS. LONG: Exactly.

MR. KING: So it would be -- it wouldn't be long before we would have to come back in.

MR. REIMER: We are confident in our relationship with CRA, and the historical tax returns that we have filed and in the tax advice that we have gotten.

MS. LONG: We are just trying to get the best information that we can to understand what your position is.

MR. REIMER: I understand.

MS. LONG: And what the implications of any decision that we may come up with would be, and to have a discussion in this room about possible consequences. That's the reason that I wanted to ask just the further question, Mr. Sidlofsky, but feel free to continue.

MR. REIMER: CRA's response is not nearly as significant as some of the issues that Pat raised, but, yeah.

MR. SIDLOFSKY: Would it be fair to characterize your position that Five Nations is asking the OEB to directly use amounts that are generated through the return component of that revenue requirement and that stay within the utility in order to fund non-utility activities? Is that? Feel free to correct me, but my sense is that you are proposing to take money that's included in your revenue requirement and use it for non-utility activities.

MR. REIMER: Over the course of the past day and a half, we have had some discussions about what FNEI would plan to do with this ROE portion of its revenue requirement. When you -- the way your question comes across, "use revenue requirement for non-utility", I think we need to make that distinction that as any regulated market participant, our cost of service envelope includes four different amounts. If we were to take the amount set aside for OM&A, you know, and start buying personal vehicles for all our friends, stuff like that, non-utility, definitely there would be an issue with that, using that as an example.

However, if we were to take our ROE, set it aside whether we use a separate fund whether, whatever mechanism that management and the governance of FNEI come up with, that relates to the, you know, my very respectful response earlier where it's akin to a shareholder using his or her dividend payment for whatever he or she determines is most important.

So if we look on the previous order, it's page 43 of the compendium, page 23 of the order. For a long time we have taken grave offence to this, to the wording of this, the third paragraph:

> “It is important to address the point that FNEI's proposal to use the reserves or excess earning to support the social, economic, and civic welfare and development activities in the three First Nations. The Board rejects this proposal."

We have always made that distinction that our operating activities are completely separate from any social or corporate objectives that we have as a corporation.

I am not sure if I am answering your question, but I want to make sure that you understand the delineation between our day-to-day operations as a transmitter versus our corporate objects. We are not going to -- we are not -- there won't be a blurring or a commingling of those kind of activities. Never has been.

MR. SIDLOFSKY: If I look a little further down in that paragraph, actually, to the last sentence in that paragraph that you were quoting from, the OEB in that decision said:

> “There are certain Board-approved charitable programs and the utility should inquire as to how they may be accommodated by the utility going forward."

Your application was prepared on the basis of the filing requirements for transmission revenue requirement applications; correct?

MR. REIMER: Substantially, yes.

MR. SIDLOFSKY: Okay. And that wasn't meant as a critique of the application or anything, it's simply did you file on the basis of your -- did you use the filing requirements in preparing your application?

MR. REIMER: Yes.

MR. SIDLOFSKY: Okay. And I don't have this in the compendium, but I am hoping you will trust me when I read it from the filing requirements. This is section 2.8.9, and it relates to charitable and political donations. And what it says is -- and to be very specific, this is from the Board's filing requirements for electricity transmission applications, and specifically it's from Chapter 2, which does relate to revenue-requirement applications.

So section 2.8.9 says:

> “The applicant must file the amounts paid in charitable donations per year from the last OEB-approved rebasing application up to and including

the test year or test years. The recovery of charitable donations will generally not be allowed for the purpose of setting revenue requirement. If the applicant wishes to recover such contributions it must provide detailed information for such claims. The applicant must review the amounts filed to ensure that all other non-recoverable contributions are identified, disclosed, and removed from the revenue-requirement calculation. The applicant must also confirm that no political contributions have been included for recovery."

Would you agree with me that the OEB has certain restrictions regarding the funding of charitable donations through the revenue requirement?

MR. REIMER: Our understanding of this and the discussion that I had with that particular Board Staff member at the time was that this is specific to the cost envelope for your OM&A. We had previously included community engagement, community support-type activities, such as grade-eight school trips. We provided some scholarship funds. We contributed $10,000 a year to a regional gathering, those type of actives. We had extensive discussions saying that those aren't appropriate. For this application we have taken -- those don't -- we haven't requested any funds for that.

So again I would make the delineation between OM&A regular day-to-day business expenses versus what FNEI, akin to dividend payments, wishes to invest in its community and social objectives. I would make that distinction. I understand the Board's concern with taking -- using these type of charitable or political donations. FNEI hasn't asked for any of that in its rate application.

MR. SIDLOFSKY: So I think, just to summarize your approach here, the ROE component of your revenue requirement would be seen as similar to a dividend -- an amount available for dividend payments; is that right?

MR. REIMER: Yes, correct.

MR. SIDLOFSKY: And I think your position, just to move one step beyond that, is that your view is that it shouldn't matter to the OEB what's done with that equivalent to a dividend?

MR. REIMER: That's what I have respectfully submitted, yes.

MR. SIDLOFSKY: Okay, and --

MS. DUFF: Just one more question on that --

MR. SIDLOFSKY: I'm sorry.

MS. DUFF: -- because it is a decision whether there is a dividend or whether you retain it for the company, you know, because you think you have got a capital project that's on the horizon. I just want to take that one step further. Could you answer that? How you make a decision. Like, there seems to be a grey area here where we are talking about dividends and that characterization, but there is always an objective decision of a board of directors. Do I retain it or do I pay it out, and that was why I was asking about your governance structure.

MR. REIMER: Yes, yes, absolutely. Like any other company, you would make -- you would make this determination based on what are the future cash-flow needs, what are the capital investments. Like, when Pat was referring to the Cree West example, Cree West desperately needed this cash to fund ongoing development of its company, but the shareholder said, "No, we need our cash more than you need it."

So that's -- that will always be the discussion at the governance level: How much do we need, how much of this ROE amount do we need to keep within the company, how much can we set aside for these corporate social objectives.

MS. DUFF: Thank you.

MR. SIDLOFSKY: I am going to take you to page 217 of the compendium, and specifically to part A of your response to interrogatory 7-Staff-33. In that response you said that if the OEB doesn't grant it the approval that it seeks it will become a for-profit entity and pay dividends to its shareholder.

Are there any legislative restrictions, regulatory restrictions, to Five Nations converting to a for-profit entity at this time?

MR. REIMER: Not to the best of my knowledge.

MR. SIDLOFSKY: Would you require any approval from any government agencies, ministries to make that change?

MR. REIMER: Not to my knowledge.

MR. SIDLOFSKY: And if you were to become a for-profit entity, would the OEB expect you to come back with an application for a new revenue requirement as a result?

MR. REIMER: The only reason we would make the change to a for-profit would be as the result of an unfavourable OEB decision forbidding us from -- or not enabling us to earn an ROE. Yes, we would, and then immediately come back. We would have significant development expenses to try to draft an appropriate shareholders agreement. I have worked with companies that have spent in excess of $300,000 just to hammer out a shareholders agreement.

Given the scope and the numbers and the issues that Pat has referred to, I can see us easily exceeding that amount. We would then also immediately have income-tax expense that we would then need to put into our cost-of-service application. I fail to see how that change would be of benefit to the ratepayers of the province.

MR. SIDLOFSKY: And I can only assume that the income-tax impact is going to be material for you.

MR. REIMER: That would be my understanding.

MR. SIDLOFSKY: And you would expect that recovered through the uniform transmission rates then, right -- correct, as part of your revenue requirement?

MR. REIMER: As is my understanding for all other market participants, including partnerships.

MR. SIDLOFSKY: I have a few questions for you on establishing a revised reserve fund framework. And again, I will say I understand your position on the reserve funds, but Staff would like to ask a few questions about that in the event that we need to think about how the reserve approach might continue to be workable, or more workable for Five Nations.

In your response to interrogatory 7-Staff-33 F, and that was in Exhibit K1.2, you provided an updated version of the reserves policy and I note that the -- that a policy was originally filed with Staff, a draft policy was originally filed with Staff after the 2010 decision on your revenue requirement. And with respect to the operating reserve, Five Nations had revised the amount to 2.58 million for the operating reserve, and previously that was 1.75 million, correct?

MR. REIMER: That is correct, yes.

MR. SIDLOFSKY: And the $2.58 million reserve is now based on the highest six months of actual OM&A in the preceding two years, correct?

MR. REIMER: Yes. March 31st.

MR. SIDLOFSKY: I'm sorry?

MR. REIMER: The quarter ending March 31st, the two years prior to that.

MR. SIDLOFSKY: Okay. And you have indicated in that response that you would update that amount every year. Is that correct?

MR. REIMER: For the record, I should note that we responded to interrogatory 33 out of our desire to work through this process.

MR. SIDLOFSKY: I understand that this doesn't represent your position, it's not something you are advocating. And I do understand that you have provided the updated policy in order to respond to the interrogatory. Does that help you going forward in your answers?

MR. REIMER: Okay.

MR. SIDLOFSKY: Okay. So take my questions as assuming that you don't agree with this approach, and I will take your answers as assuming that you don't agree with the approach.

MR. REIMER: Okay.

MR. SIDLOFSKY: Why would you suggest that the reserve cap be updated every year?

MR. REIMER: Our understanding of what the operating reserve was supposed to be a proxy for was to meet the normal day-to-day requirements of a utility, and the normal day-to-day requirements of a utility change over time. So there should be some mechanism, hypothetically speaking, to allow for a review of the cap amounts.

MR. SIDLOFSKY: And you have a section on the role of the board of directors and management, just a little further down on page 3 of that draft policy. What you have stated there is that the fund would be used to deal with common and frequent OM&A expenses as they arise, correct?

MR. REIMER: Yes.

MR. SIDLOFSKY: But elsewhere you have stated that accessing the reserve would only occur to deal with cash flow issues and the event of material unplanned OM&A expenses.

I am just wondering if you could clarify those statements or reconcile them and advise -- sorry, just to get the second part of my question in, if you could advise how often Five Nations thinks it would actually need to access the operating reserves in a given year.

MR. REIMER: As noted in our evidence, and just a little while ago we talked about transmission line maintenance, given that we have a $450,000 envelope, the bulk of that money gets spent within two to three months. That hypothetically could be a situation where we are spending our entire -- the entire annual amount within two to three months. That would not be unplanned or catastrophic. That would refer to the cash flow issues.

Does that answer your question?

MR. SIDLOFSKY: Yeah, that's helpful, thank you. And would there be any limitations on accessing the operating reserve depending on the amount available or forecast to be available in your general bank account?

To give you a bit of context, in your previous draft policy, $500,000 was shown as the threshold for that.

MR. REIMER: Yes, the finance controller starts sweating when the balance in that bank account dips below 500.

MR. SIDLOFSKY: So is that -- would that be the threshold here as well then?

MR. REIMER: Hypothetically speaking, it could be.

MR. SIDLOFSKY: Sure. With respect to the capital reserve fund, it was initially, based on the 2010 decision, $275,000 and you have updated that to 1.795 million, correct?

MR. REIMER: That's correct.

MR. SIDLOFSKY: And you also said that as with the OM&A, the operating reserve, you said that you'd update the reserve amount annually based on the forecasted capital expenditures for the upcoming year, correct?

MR. REIMER: That's correct.

MR. SIDLOFSKY: And the capital reserve would be used to fund capital expenditures that are part of your capital plan, and unplanned capital expenditures that aren't covered by insurance. Is that accurate?

MR. REIMER: That's correct, yes.

MR. SIDLOFSKY: You went on to say that after each quarterly financial statement is approved by your board of directors, you would transfer an amount from the capital reserve to an operating bank account that's equal to the actual amount of capital expenditures in the previous quarter, correct?

MR. REIMER: Yes.

MR. SIDLOFSKY: And could I just ask you to confirm that the capital reserve amount of $1.795 million represents your forecasted 2017 capital expenditures?

MR. REIMER: That's correct.

MR. SIDLOFSKY: And in the draft reserves policy that was previously filed as part of the 2010 revenue requirement proceeding, Five Nations stated that amounts would only be withdrawn when Five Nations' account was forecast to fall below $500,000 and you needed funds to make unanticipated capital expenditures that were not part of your capital plan and not funded by the insurance reserve fund.

Could you explain why there aren't any conditions for withdrawal from the capital reserve in your updated reserve policy?

MR. REIMER: Again, hypothetically speaking?

MR. SIDLOFSKY: Yes.

MR. REIMER: We were tying -- we are merely making this policy as simple as possible to administrate and, in this case, whatever was required for capital expenditures would need to come from the capital reserve fund. So it would be just a simple transfer at the end of every quarter.

MR. SIDLOFSKY: And in your -- thank you for that answer. In the updated draft policy, you seem to have designed the capital reserve fund so that it would basically be fully funded each year with all the money necessary expected to pay for all expected capital expenditures for that year, is that correct?

MR. REIMER: That's correct.

MR. SIDLOFSKY: And could you explain how that's appropriate, given that you'll already be receiving revenues through your revenue requirement that are -- that have been granted to cover things like deprecation of assets and reinvestment in those assets?

MR. REIMER: This policy attempts to answer, in a hypothetical manner, how we would envision this working.

The assumption was that there would be very limited, very limited -- like our cost of service revenue would be, how would I say, would be limited. And so the amortization that's built into that does not necessarily always equal the amount of capital investment.

MR. SIDLOFSKY: Sorry, but your revenue requirement would allow you a certain amount for depreciation.

MR. REIMER: That's correct, yes.

MR. SIDLOFSKY: So -- and I don't think there has been a suggestion in my discussion with you about the ROE that there wouldn't be a component of your revenue requirement related to depreciation.

MR. REIMER: Understood.

MR. SIDLOFSKY: Is it possible that -- and acknowledging that this is simply a draft and your attempt to establish a policy on a theoretical basis, is there a possibility of double recovery of capital costs over time if you were to have a policy that allowed for application of some of those capital funds to things like depreciation when depreciation is already in your revenue requirement?

MR. REIMER: Our understanding based on what was written in a 2010 decision was that every quarter we would submit reports to the OEB that would then, if we are over-earning, would reduce our revenue requirement. So I don't -- I don't -- again, hypothetically speaking, theoretically, I don't anticipate there would be the opportunity to double-earn capital amounts.

MR. SIDLOFSKY: Okay. And you suggested, just going back to the operating reserve fund, you suggested a three-year funding time frame? That's in part G of your response to 7-Staff-33. I am just wondering if you could give us a rationale for that suggested funding term.

MR. REIMER: I -- again, it's a hypothetical, umm... It was just a -- I can't really answer that question. It's just we assumed that we couldn't -- we assumed that this wouldn't -- you know, we wouldn't have surplus to be able to fund it quicker. Three years was just a best estimate. There really is no -- I can't say -- can't point to any specific rationale for three years.

MR. SIDLOFSKY: Okay. If I take you --

MR. REIMER: It seemed reasonable.

MR. SIDLOFSKY: I am sorry?

MR. REIMER: It just seemed to be a reasonable length of time to fund this.

MR. SIDLOFSKY: Okay. If I take you to page 63 of the compendium and we go to part K of your response to interrogatory 1-Staff-12. As of March of 2017, you had $1.7 million in cash; correct?

MR. REIMER: That is correct.

MR. SIDLOFSKY: Could that cash net of the $500,000 balance that you maintain in your operating account be used to begin the funding of those reserve funds?

MR. REIMER: Hypothetically speaking?

MR. SIDLOFSKY: Yes.

MR. REIMER: It could also be used to start funding our corporate objectives, so, yes.

MR. SIDLOFSKY: Once again, I understand your position on the reserve funds.

And that's the -- I believe that's the last of my questions on the reserve funds. So moving to deferral and variance accounts, I just have --

MS. DUFF: Can we do a time check? How much longer do you have in your cross-examination? I want to see if we can keep going.

MR. SIDLOFSKY: No more than a half hour.

MS. DUFF: And Mr. King, have you an assessment of your redirect? I am just wondering.

MR. KING: Little to none.

MS. DUFF: Oh, I like that answer. But you have every right to take as much time as you want. If it's okay with the witnesses and the court reporter I say we just -- full steam ahead. Is that all right? Please let me know if anybody needs a break. Continue, please.

MR. SIDLOFSKY: Thank you. Just a question about deferral and variance accounts. Page 235 of the compendium. And I suppose the good news is that we are almost at the end of the Staff compendium.

Five Nations stated that it would file a draft accounting order for the proposed forgone revenue account at a later date. Staff would like an opportunity to review and provide some comments on that draft accounting order as part of the submission process if at all possible.

Would you be able to undertake to provide a draft accounting order for the proposed forgone revenue deferral account?

MR. REIMER: Yes, we have no problem. Whatever is the most expedient way of dealing with that, yes.

MR. SIDLOFSKY: Thank you. Perhaps we could mark that as Undertaking J2.3.

UNDERTAKING NO. J2.3: TO PROVIDE A DRAFT ACCOUNTING ORDER FOR THE PROPOSED FORGONE REVENUE DEFERRAL ACCOUNT.

MR. SIDLOFSKY: Just a few questions about your proposed stretch factor. At page 237 of the compendium, we've reproduced part of your application, Exhibit 10, tab 1, schedule 1. And in that schedule you proposed a revenue cap IR plan that adjusts the base transmission revenue requirement each calendar year for the period of January 1st, 2017 to December 31st, 2020 based on inflation minus a productivity and stretch factor. And specifically, you propose to use the same productivity factor as established by the OEB for electricity distributor IRM adjustments, which is zero, and a 0.3 percent stretch factor, which is the mid-range for electricity distributors; correct?

MR. REIMER: That's correct.

MR. SIDLOFSKY: And your view was that using the mid-range stretch factor is appropriate in the absence of benchmarking because most LDCs fall within the mid-range.

MR. REIMER: That was the rationale, yes.

MR. SIDLOFSKY: Right. And I know that -- I believe it was Mr. Yauch who had some questions for you about this as well. I will try not to repeat those, but I just have a couple.

First of all, are you assuming that Five Nations would fall into the mid-range of transmitters if benchmarking had been performed?

MR. REIMER: That's a very difficult question to answer, because there are no comparable transmitters. For the purpose of this application we used the mid-range thinking that that was the most reasonable approach, given the lack of any other rationale.

MR. SIDLOFSKY: Maybe I could try to restate my question a bit. Was it an arbitrary decision to use .3 because that's the mid-range, or was the decision to use .3 based at least in part on the notion that that's where you should fall in terms of your efficiency?

MR. REIMER: It was entirely arbitrary.

MR. SIDLOFSKY: Okay. One question about your charge determinant forecast. Page 241 of the compendium -- and this is in your response to interrogatory 5-Energy Probe-9. You stated that you don't plan on updating your charge determinant forecast with your annual filings given your small size as a utility.

Would it also be the case that annual updates to the charge determinants won't be required because there is really no expectation that your load forecast is going to change materially over the IRM term?

MR. REIMER: Yeah, I would tend to -- yeah, I would tend to agree with that.

MR. SIDLOFSKY: And I think we spoke yesterday about the fact that you don't anticipate load growth over that period, over the IRM period.

MR. REIMER: Not significant, no.

MR. SIDLOFSKY: Would --

MS. DUFF: But you expect load deterioration.

MR. SIDLOFSKY: Right.

MS. DUFF: I thought we -- sorry --

MR. SIDLOFSKY: No, I'm sorry, go ahead.

MS. DUFF: I mean, the one good thing about me jumping in is that we don't have a half an hour of Panel questions at the end, but I am sorry, Mr. Sidlofsky. I should be more patient. Please continue.

MR. SIDLOFSKY: No, no, please ask your question, because I was going to ask about that.

MR. REIMER: Yes.

MS. DUFF: So there is a risk? Do you agree that there is a risk to Five Nations associated with DeBeers' operations and their demand?

MR. REIMER: Yes, what they have publicly released shows them significant reduction in load coming 2019.

MR. SIDLOFSKY: Just to follow-up on Ms. Duff's question, if that happens, if that does take place, what do you anticipate doing about that in terms of your revenue requirement or your annual updates?

MR. REIMER: We are hoping that it doesn't happen. Right now, FNEI has a connection cost recovery agreement with DeBeers. It's approximately $400,000 a year that they reimburse us for maintenance activities on their constructed assets that we operate.

We imagine if they -- by virtue of closing down, if they no longer -- if that agreement ends, at some point we would have to do an analysis to see if that materially effects, and it most likely would, our OM&A costs. So those are questions that we would have to sit down -- one of the impacts definitely would be these charge determinants.

It would -- I imagine it would in effect be a material change, and we would let the Board know.

MR. SIDLOFSKY: Okay, thank you for that. And the last area I am going to be asking about is your proposal on Z-factors.

Originally, you had proposed a $100,000 materiality threshold for Z-factor events. And at page 243 of the compendium, we have reproduced your response to interrogatory 10, Energy Probe 14. You've stated there that you're amenable to a higher threshold of $400,000 due to your unique circumstances. First of all, are the materiality thresholds you are proposing, whether it's $100,000 or $400,000, are those on a revenue requirement basis, or an actual capital expenditure basis?

MR. REIMER: We haven't spent a whole lot of time discussing the whole IRM concept and how it would impact the day-to-day operations of FNEI. I anticipate that would be on an actual expenditure basis.

MR. SIDLOFSKY: So that if an event took place and you had to invest say $400,000 in capital, your thinking is that you would recover the full $400,000?

MR. REIMER: Yes, I see what you mean. We would, we would most -- again, we haven't spent a whole lot of time on this IRM plan and how it would impact our day-to-day operations.

With respect to capital expenditures, I imagine it would be more appropriate to look at this from a revenue requirement -- the capital expense would, of course, be added into rate base, so on and so forth. So it might be more accurate to say that we would look at this from a revenue requirement rather than a cost recovery.

For OM&A, of course it would be cost recovery direct costs, but for capital expenditures, there would be the addition to rate base, the cost of capital -- and I won't say ROE, no.

MR. SIDLOFSKY: So then a capital investment that you need to make in the context of a Z-factor event would be treated the same way as a capital investment that you would make in your system in the normal course of -- you know, in the normal course of working through your capital plan?

MR. REIMER: Again, I have difficulty answering this question because we haven't really spent a whole lot of time discussing how this IRM would work on a day to the day basis for FNEI.

MR. SIDLOFSKY: Okay.

MR. REIMER: I imagine that, yes, my response would be yes.

MR. SIDLOFSKY: I will leave that there for now, but I also just wanted to touch on the unique circumstances that you discuss in your response to 10-Energy Probe-14. Is that -- are the unique circumstances that you are referring to the availability of the insurance reserve, and that's fully funded at $4 million?

MR. REIMER: I am sorry, where do you see the text "unique circumstances"?

MR. SIDLOFSKY: Sorry, yes, it is right in their question, part B.

MR. REIMER: Oh, their question, okay. I would just go with the response as it's stated. Anything less than 400,000 we can manage in the normal course of business.

Yes, we do in fact have money set aside to respond to significant events that would normally trigger an insurance claim.

MR. SIDLOFSKY: And what's the purpose of the insurance reserve?

MR. REIMER: Going back when FNEI first started putting this project together, there was a significant ice storm that some of you may recall, which basically destroyed the transmission distribution line insurance market. So we were unable to get any -- there was not any commercially-available insurance for transmission line assets.

So the lenders requested -- at the time, Bank of Montreal and Pacific Western requested that we set aside 4 million. Actually, it was 5 million initially; we managed to bring it down to 4 million, just so they had some comfort level that the assets that they were lending money to construct could be replaced without insurance being available.

MR. SIDLOFSKY: So essentially you are self-insuring then, right?

MR. REIMER: Yes.

MR. SIDLOFSKY: So how do you see the Z-factor availability meshing with the fact that you do have this $4 million insurance reserve? Would a Z-factor essentially serve the same purpose as the insurance reserve?

MR. REIMER: At some point we would -- immediately, we would need to then bring the insurance reserve back up to the $4 million.

MR. SIDLOFSKY: But would a Z-factor -- would the availability of a Z-factor be limited then to costs that are outside of the scope of the insurance reserve, or that -- or for amounts that exceed the amount of your reserve?

MR. REIMER: My understanding is that these Z-factor amounts would be to cover unanticipated costs. Whether the initial cash would come from insurance reserve or whether the operating account, at some point FNEI would need to recover these funds, would need to recover these costs.

MR. SIDLOFSKY: Have you had to use the reserve fund in the past?

MR. REIMER: No.

MR. SIDLOFSKY: Then it's probably a hypothetical question, but how would you go about re-funding that reserve if you do have to make use of it?

MR. REIMER: We would of course work very closely with our senior lenders to keep them informed as to the repair and replacement of the assets that were damaged. We would then, I would imagine, put together some cash flow forecasts that would see what we -- what type of funds we would see available to then allow us to replenish that insurance reserve to bring it back up to the $4 million.

That would be done on a very high priority, I anticipate. Like we haven't been in that situation.

MR. SIDLOFSKY: Would you -- sorry, would you anticipate using a Z-factor application as a way of topping up the insurance reserve?

MR. REIMER: My understanding, again, my understanding of the Z-factor is to allow for a utility to recover unanticipated expenses. The timing of that may or may not necessarily coincide with the re-funding, so to speak, of the insurance reserve.

MR. SIDLOFSKY: I have one more question. And it's probably just going to be dealt with by way of an undertaking. In the same way that you agreed to provide a draft accounting order for the forgone revenue deferral account, we are hoping that you could also provide a draft accounting order for the Z-factor deferral account. That will just give Staff a chance to review it and provide comments on it at the submission stage. Would you be willing to do that?

MR. REIMER: Sure.

MR. SIDLOFSKY: Thank you. Panel, those are my questions, and thank you very much to the witness panel as well for your patience.

MS. DUFF: Did you want an undertaking number for that?

MR. SIDLOFSKY: I am sorry, yes. And I was --

MS. DUFF: A very helpful suggestion from the court reporter.

MR. SIDLOFSKY: Thank you to our reporter. That would be Undertaking J2.4. Here I was so excited about getting to my last question I totally missed the undertaking number. But thank you. Those are my questions, Panel.

UNDERTAKING NO. J2.4: TO PROVIDE A DRAFT ACCOUNTING ORDER FOR THE Z-FACTOR DEFERRAL ACCOUNT.

QUESTIONS BY THE BOARD:

MS. DUFF: At this point I just have one question. Then Ms. Long will go first, please.

MS. LONG: I just have one question, and Mr. King, I think it's to you. You had mentioned that Exhibit 7, tab 2, schedule 1, which is a discussion of not-for-profit corporations, was I guess excerpt from a legal opinion provided to the applicants, and I am just going to ask you to consider after having a discussion with your clients, of course out of the context of this room, whether or not you think that would be helpful for the Board to review, whether that would provide us any additional information that we might find helpful as we review this issue, which is obviously quite important in this hearing. I just ask you to take that away and have a conversation with your client. If there are solicitor-client implications that you don't want to file it, I would understand that. But if you think it would provide any additional information for us as we consider this issue, I would invite you to consider that.

MR. KING: Is that for a filing of the original legal opinion that formed the basis of that evidence or an opinion specifically with respect to just whether calling the excess revenues, let's call them that, an ROE would jeopardize the non-profit status or either?

MS. LONG: Well, I am interested in both. I mean, obviously it's an issue for us, and if you have done additional work to what's contained in here I think we would benefit from reading it. It's obviously up to you whether or not you want to file it, but I just ask you to perhaps consider whether or not you think that would be helpful for us.

MR. KING: Okay.

MS. LONG: Thank you.

MS. DUFF: I had one question, and it was just getting back to the undertaking I asked yesterday. It was the very first one, J1.1. And actually, I think Ms. Long asked for it first. It was regarding a capital expenditure forecast for 2018 to 2020.

And before, you know, we end this oral hearing and you go off and, you know, put that together, I am just questioning the value. Have -- I understood the conversation. I just went back to the transcript -- was, Five Nations hadn't put together a capital expenditure budget for 2018 to 2020, like, as we are sitting here today; is that correct?

MR. REIMER: We put together very briefly some rough numbers what we anticipate. But it's not something that we would be comfortable filing. We'd rather take the time, really sit down, sit down with our operations manager, see what kind of assets are nearing, you know, specific assets are nearing the end of useful life, and we have, you know, we had put some rough numbers together, but it's -- I wouldn't be comfortable sharing that.

MS. DUFF: Anticipating that was going to be your answer, I think the Board is prepared not to -- we are going to strike J1.1. I mean, we are trying to get these undertaking responses back in a timely fashion to help. If there is new information in that or information that you haven't properly vetted through your, you know, your board of directors, I don't know what value that would be to the Board, our Board, the Ontario Energy Board, so we are going to eliminate that as a requirement.

MR. REIMER: Thank you.

MS. DUFF: Now, looking at the list of other undertakings, if there is any subsequent updates or you have any issues regarding they are going to take a lot longer -- because the last thing we are going to do is set a schedule, so I just, I invite you, if there is information subsequent to you looking at this, going, wow, this is not going to be in short order, this is going to take a lot of time, I think you need to inform the Board of that, okay?

Any redirect, Mr. King?

RE-EXAMINATION BY MR. KING:

MR. KING: There is now, and it's just dealing with the questioning close to the end around the DeBeers risk. Mr. Reimer, it's to you. You had mentioned -- and I obviously don't have the transcript in front of me yet -- that in terms of the risk as a result of DeBeers' load disappearing there would be an OM&A risk.

Is that OM&A that is recovered through your revenue requirement or OM&A recovered through the cost recovery agreement you have with DeBeers?

MR. REIMER: Currently right now we recover those costs directly from DeBeers.

MR. KING: And so the loss of any customers such as DeBeers or in fact any of the other three wouldn't have a material impact on your revenue requirement; would it?

MR. REIMER: Not necessarily.

MR. KING: Can you sort of elaborate on why that is?

MR. REIMER: I think, as I stated before, the annual amount between FNEI and DeBeers is approximately $400,000. It includes some regular maintenance, helicopter patrol, some right of way clearing costs. If we are working on their section, it's all spelled out in the original, the original agreement, what expenses we can attribute to them.

Some of those expenses may fall away, some of those expenses we may choose not to incur. It's difficult to at this point, without sitting down and -- sitting down with our operations manager, determining just exactly what the scope will be, it's tough to give a definite answer.

MR. KING: But you will agree that your revenues aren't tied to the number of customers you have or the loads of those customers.

MR. REIMER: I misunderstood the question. No, there is no -- there is no -- our -- ultimately our revenue forms a fraction of a percent of the total transmission system pool, which is based on the overall electricity consumption in the province. The reduction of one mine would have negligible, if any, impact on our overall revenue.

MR. KING: So even if DeBeers' load doubled in the next five years it probably wouldn't materially change your revenue requirement.

MR. REIMER: Not from that perspective, no.

MR. KING: Okay, that's all.

MS. DUFF: Okay, thank you very much.

PROCEDURAL MATTERS:

Procedurally, the Board will establish a procedural order after today, but I wanted to just discuss potential dates and deadlines. The first order would be the undertaking responses. It's been proposed to me that perhaps Friday, July the 28th would provide some time for the witnesses and the company to respond; is that acceptable, Mr. King?

MR. KING: I think that's agreeable.

MR. SIDLOFSKY: That's fine.

MS. DUFF: And how much time for argument-in-chief, one week after that?

MR. KING: That's correct, yeah.

MS. DUFF: All right. Parties, I guess the Board usually establishes one to two weeks after that for written submissions. Oh, just to confirm, argument-in-chief is written form; correct?

MR. KING: Whatever you wish.

MS. DUFF: Well, I mean, the Board was not anticipating gathering together. It's from a logistics perspective a bit more complicated to deliver it orally.

MR. KING: That's fine.

MS. DUFF: Well, I will leave it -- Mr. Sidlofsky, I will leave it with you, because Mr. Yauch is not in the room, so perhaps you could confer.

MR. SIDLOFSKY: I should check with him in terms of his timing. Maybe I will do that before I give a suggestion from Staff as well.

MS. DUFF: Okay, great. Well, then we will take that into consideration in establishing the procedural order. Great.

Anyhow, thank you very much, the court reporter and the witnesses. Two long days, a lot of information, but I think we had a good discussion and exchange of information. Thank you. And this hearing is adjourned.

--- Whereupon the hearing adjourned at 12:58 p.m.