



ONTARIO ENERGY BOARD

FILE NO.: EB-2016-0380

Ensqr Corporation

VOLUME: 1

DATE: July 13, 2017

BEFORE: Ken Quesnelle

Presiding Member

THE ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF a Notice of Intention to
Make an Order under section 112.4 of the Ontario
Energy Board Act, 1998 for Revocation of a
Licence against Ensqr Corporation (Licence Number
ES-2012-0461).

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Thursday, July 13, 2017,
commencing at 9:43 a.m.

VOLUME 1

BEFORE:

KEN QUESNELLE

Presiding Member

A P P E A R A N C E S

JAMES SIDLOFSKY Board Counsel

MICHAEL BELL Board Staff
VINCE MAZZONE

JUSTIN SAFAYENI Compliance Counsel

HARSHAL GUNDE Ensqr Corporation

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NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING.

1 Thursday, July 13, 2017

2 --- On commencing at 9:43 a.m.

3 MR. QUESNELLE: Good morning. Please be seated.

4 My name is Ken Quesnelle. I'll be presiding over the
5 hearing today. The matter before us is Board file number
6 EB-2016-0380. On February 1st, 2017 the Ontario Energy
7 Board on its own motion issued a notice of intention to
8 make an order for revocation of Ensqr Corporation's
9 electricity unit sub-metering licence, specifically ES-
10 2012-0461, under section 112.4 of the Ontario Energy Board
11 Act.

12 By letter dated February 14th, 2017 Ensqr Corporation
13 requested that the OEB hold a hearing in this matter, and
14 the OEB issued a combined notice and Procedural Order No. 1
15 on April 25th, 2017 which established today's date for the
16 oral hearing.

17 The two parties in this proceeding are Ensqr
18 Corporation and the OEB enforcement team.

19 So perhaps I'll just start by taking appearances.

20 **APPEARANCES:**

21 MR. SAFAYENI: Good morning, Mr. Chair. Justin
22 Safayeni here for enforcement staff.

23 MR. QUESNELLE: Mr. Safayeni.

24 MR. GUNDE: Harshal Gunde for Ensqr Corp.

25 MR. QUESNELLE: Mr. Gunde, nice to meet you. Okay.

26 MR. SIDLOFSKY: Sorry, Mr. Quesnelle, James Sidlofsky,
27 Board counsel, and I'm here this morning with Michael Bell,
28 case manager, and Vince Mazzone, advisor, both from Board

1 Staff on this matter.

2 MR. QUESNELLE: Thank you, Mr. Sidlofsky.

3 **PRELIMINARY MATTERS:**

4 Any preliminary matters that we want to discuss this
5 morning? I understand there has been some conversations on
6 how we may proceed today. Mr. Safayeni, do you have
7 anything to provide us with?

8 MR. SAFAYENI: Yes, thank you, Mr. Chair. There's two
9 housekeeping matters that I would like to address. The
10 first is, in our May 12th letter to the Board I had raised
11 the possibility of filing evidence-in-chief mainly by way
12 of affidavit and having witnesses available for brief
13 examination-in-chief, and of course cross-examination or
14 any questions that the Panel may have.

15 I've spoken to my friend Mr. Gunde this morning and my
16 understanding is that he is content to proceed in that
17 manner. And if the Panel is content to proceed in that
18 manner as well, I do think it would be perhaps the most
19 efficient way of going about at least presenting our case.
20 So that's the first issue.

21 The second issue is, in my friend's materials in the
22 letter that he sent as part of his disclosure he raised the
23 issue of a discussion he had with Board Staff concerning
24 the LEAP program. That was an issue that we did not
25 address in our original materials. It was a new issue and,
26 in my submission, it was one that we couldn't reasonably
27 anticipate being raised.

28 I wrote to my friend on June 26th, and I advised -- I

1 didn't file that with the Board, but I advised him that
2 with leave of the Panel, if necessary, I would be asking
3 Ms. Marijan a few questions about the LEAP, and I provided
4 him with the substance of the anticipated evidence. I also
5 provided him with notes, so, you know, disclosure in
6 respect of that particular issue.

7 So my suggestion would be, if we're content to file
8 the affidavits and have the witnesses for the enforcement
9 team in the box for the limited purposes of a few questions
10 in-chief, then cross-examination and questions from the
11 Panel, for the sake of efficiency I would request, with
12 leave of the Board if necessary, to ask Ms. Marijan while
13 she's up on the stand the very few questions I have about
14 the LEAP and the discussions she had with Mr. Gunde on that
15 issue, to avoid having to recall her later.

16 And so those are the two kind of housekeeping issues
17 from our point of view.

18 MR. QUESNELLE: Do you have any issue with us
19 proceeding in that fashion, Mr. Gunde?

20 MR. GUNDE: No issues.

21 MR. QUESNELLE: Thank you. Okay. Mr. Safayeni, then
22 if you want to have your witnesses affirmed, or how would
23 you like to -- if that's your -- what you'd like to proceed
24 with.

25 MR. SAFAYENI: Sure, so I think I'll first call Ms.
26 Marijan, and...

27 ONTARIO ENERGY BOARD - PANEL 1

28 Chris Marijan, Sworn.

1 MR. QUESNELLE: Mr. Safayeni?

2 MR. SAFAYENI: So Mr. Chair, perhaps what we could do
3 just to keep things clear on the record, the brief that I
4 filed as part of our -- the documents that we would rely
5 on, I'm not sure if we want to mark it perhaps as an
6 exhibit.

7 MR. QUESNELLE: Why don't we do so, yes, please.

8 MR. SIDLOFSKY: That will be Exhibit K1.1.

9 **EXHIBIT NO. K1.1: OEB DOCUMENT BRIEF FILED BY MR.**
10 **SAFAYENI.**

11 MR. QUESNELLE: Thank you.

12 MR. SAFAYENI: Mr. Chair, do you have a copy with you?

13 MR. QUESNELLE: I do.

14 MR. SAFAYENI: Okay. So if I may approach the
15 witness, I'll provide her with a copy as well.

16 MR. QUESNELLE: Thank you. Mr. Gunde, do you have a
17 copy of this? Yes. Thank you.

18 **EXAMINATION-IN-CHIEF BY MR. SAFAYENI:**

19 MR. SAFAYENI: Good morning, Ms. Marijan.

20 MS. MARIJAN: Good morning.

21 MR. SAFAYENI: So if we turn to tab 2 of Exhibit K1.1,
22 we see an affidavit in your name sworn May 11th, 2017,
23 correct?

24 MS. MARIJAN: That's correct.

25 MR. SAFAYENI: Have you had a chance to review this
26 affidavit before coming here this morning?

27 MS. MARIJAN: I did.

28 MR. SAFAYENI: Does the information in the affidavit

1 remain true and accurate to the best of your knowledge?

2 MS. MARIJAN: It is.

3 MR. SAFAYENI: Could I ask you to turn to tab 2B of
4 the same exhibit number, which is the assurance of
5 voluntary compliance. Do you see that?

6 MS. MARIJAN: I do.

7 MR. SAFAYENI: And if we turn to page 4 of that
8 document, we see the first of ten terms that Ensqr is
9 required to satisfy as part of the assurance; is that
10 correct?

11 MS. MARIJAN: That's correct.

12 MR. SAFAYENI: In term number 1, we see reference made
13 to a self-certification report. Do you see that?

14 MS. MARIJAN: I do.

15 MR. SAFAYENI: Could you please explain to the Panel
16 what the self-certification report is and the purpose it's
17 designed to serve.

18 MS. MARIJAN: The self-certification report was part
19 of the OESP implementation. There were three milestones
20 that were set out to prepare utilities and unit sub-
21 metering providers to meet certain technical standards and
22 internal operational standards, and the date lines were set
23 out for each of these licensees to confirm that they've met
24 the requirements of each step.

25 MR. SAFAYENI: You mentioned technical standards and
26 operational standards. Can you just break down for me a
27 little bit what you mean by each of those categories?

28 MS. MARIJAN: The technical standards refer to a

1 portal that was created where they could -- where the
2 applicants would then file their application for OESP
3 assistance and the licensee would be able to pull the names
4 out, validate their eligibility. It was a portal that was
5 created with a third party, and this system was used across
6 the board for all OESP services.

7 MR. SAFAYENI: Who was that third party?

8 MS. MARIJAN: ICF.

9 MR. SAFAYENI: When you talk about operational
10 standards, what do you mean by that?

11 MS. MARIJAN: From an operational point of view, the
12 licensee had to prepare their bills, make sure the invoices
13 could show that the OESP was provided. There were
14 settlement functions that had to be provided.

15 MR. SAFAYENI: And were all of those functions also
16 being done in coordination with ICF?

17 MS. MARIJAN: That was not with ICF.

18 MR. SAFAYENI: That was internal with the utility?

19 MS. MARIJAN: That was internal with the licensee.

20 MR. SAFAYENI: Okay. Sticking with the same document,
21 if we go to number three, we see it says:

22 "Ensqr will complete the self-validation portal
23 to demonstrate Ensqr has completed all the
24 technical milestones associated with OESP
25 implementation by no later than August 12th, and
26 will inform OEB staff when this is complete."

27 Now, your evidence in your affidavit at paragraph 8 is
28 that Ensqr has failed to comply with any of these steps

1 except for number 10. I expect we will hear evidence later
2 this morning that Ensqr did complete the self-validation
3 portal by August 31st, 2016. But were you or, to the best
4 of your knowledge, any other OEB Staff ever advised by
5 Ensqr that that step had been completed?

6 MS. MARIJAN: I was not made aware of this, and I'm
7 not aware that anyone else at the OEB from a staff level
8 were made aware of it.

9 MR. SAFAYENI: Okay. I would ask you to turn the page
10 to term number 8. It says Ensqr will take all necessary
11 steps to ensure their website is active with their
12 conditions of service posted, and provide a link to the
13 OEB's OESP portal.

14 What's your basis for saying in this condition was not
15 met?

16 MS. MARIJAN: At the time of this assurance, that was
17 one of the steps I took to review the information. The
18 website at that time was in maintenance form. There was no
19 information about OESP or conditions of service available
20 there.

21 MR. SAFAYENI: Have you looked at the website since
22 that time?

23 MS. MARIJAN: I have. I looked yesterday, and it was
24 the same.

25 MR. SAFAYENI: And for number 9, it says Ensqr will
26 take all necessary steps to ensure that it is compliant
27 with the OEB complaint portal. Specifically, Ensqr will
28 ensure it has a user name and password in response to OEB

1 complaints in a thorough and timely manner. What's the
2 basis for you saying this condition has not been met?

3 MS. MARIJAN: We had two complaints in 2016 related to
4 Ensqr. At the time, our process is that the complaints
5 would go through a portal to the licensee for a response.
6 And both of those complaints expired with no response.

7 MR. SAFAYENI: When you say expired, what do you mean
8 by that?

9 MS. MARIJAN: The licensee has 21 days to provide a
10 response to the OEB and be in touch with the customer, and
11 we were not made aware that this was done. And they did
12 not provide a response within that 21 days through the
13 portal.

14 MR. SAFAYENI: Okay. The final series of questions
15 I'm going to ask you is around the Low-income Energy
16 Assistance Program, or the LEAP. First, can you just
17 describe to me what LEAP is?

18 MS. MARIJAN: LEAP is a program designed for low
19 income consumers. There's three components to it. One is
20 the emergency funding. It's a one-time credit that would
21 be given to the customer. There is also specific customer
22 service related to low-income customers, and a conservation
23 and demand management program designed for low-income
24 consumers.

25 MR. SAFAYENI: And when you talk about a one-time
26 credit or payment, who makes that credit or payment?

27 MS. MARIJAN: Initially, the utilities provide funding
28 for that program, and the customer would work with a social

1 agency to determine their eligibility and that payment
2 would come from the social agency.

3 MR. SAFAYENI: Did you have any discussions with Mr.
4 Gunde about LEAP?

5 MS. MARIJAN: I did have a conversation with him in
6 early July 2016. This was following the initial notice of
7 intention.

8 MR. SAFAYENI: What do you remember from that
9 discussion?

10 MS. MARIJAN: Mr. Gunde had informed us he wasn't
11 aware that the LEAP program was separate from the OESP
12 program or, to be more clear, that if a customer was
13 eligible for LEAP, that they would also be eligible for
14 OESP.

15 MR. SAFAYENI: And what was your response?

16 MS. MARIJAN: I informed him they were separate and
17 distinct programs, and having one program did not mean that
18 the customer couldn't have -- couldn't be eligible for the
19 other program.

20 MR. SAFAYENI: Thank you, Ms. Marijan. Those are all
21 my questions. I'll turn the floor over to Mr. Gunde, if
22 there is anything he wants to ask you.

23 MR. QUESNELLE: Do you have any questions of clarity,
24 Mr. Gunde?

25 MR. GUNDE: No questions.

26 MR. QUESNELLE: Thank you very much. Okay. I don't
27 have any further points of clarification or any further
28 requirement for information. Thank you.

1 MS. MARIJAN: Thank you.

2 MR. SAFAYENI: Thank you, Ms. Marijan. Our next and,
3 I expect, final witness is Jessie Colberg.

4 MR. QUESNELLE: Ms. Colberg please?

5 **ONTARIO ENERGY BOARD - PANEL 2**

6 **Jessie Colberg, Sworn.**

7 MR. SAFAYENI: Mr. Chair, I'll approach the witness
8 and provide her with a copy.

9 MR. QUESNELLE: Certainly.

10 **EXAMINATION-IN-CHIEF BY MR. SAFAYENI:**

11 MR. SAFAYENI: Good morning, Ms. Colberg.

12 MS. COLBERG: Good morning.

13 MR. SAFAYENI: Exhibit 1 is an affidavit of yours
14 sworn May 11, 2017, correct?

15 MS. COLBERG: Yes.

16 MR. SAFAYENI: You had an opportunity to review this
17 affidavit before coming here today; correct?

18 MS. COLBERG: I have, correct.

19 MR. SAFAYENI: Are there any corrections you would
20 like to make to the affidavit?

21 MS. COLBERG: Yes, there is one amendment to be made
22 in paragraph 6. The date there reads August 31, 2017, and
23 it should read August 31, 2016.

24 MR. SAFAYENI: You're referring there to the date at
25 the third line of paragraph 6, correct?

26 MS. COLBERG: Yes.

27 MR. SAFAYENI: If we look at paragraph 2 of your
28 affidavit, it outlines a number of different steps, as I

1 understand it, that need to be completed before
2 applications can be -- from consumers can be processed.

3 Could you just take us briefly through what those
4 steps are, at least at a high level, and let us know when,
5 if ever, those steps were completed by Ensqr?

6 MS. COLBERG: Yes. So from a high level, when a
7 utility is being on-boarded to the OESP program, the first
8 step that we take to bring them on board with we call the
9 testing phase, whereby they must complete a set of test
10 cases in what we call a self-validation portal built by
11 ICF.

12 Once they self-declare that they can pass these test
13 cases in their system built for OESP, we consider them to
14 be ready for the production phase, phase 2. And Ensqr
15 provided us with confirmation of these test cases on August
16 31st, 2016, at which point we move them into the production
17 phase. We give the utility access to what's called an SFTP
18 folder, secure file transfer protocol folder, where the
19 utilities can use the credentials we provide them to
20 process real applications on behalf of their customers, and
21 they confirmed that they could see and access these folders
22 on September 13th, 2016.

23 Phase 3 is ongoing processing of files as they come
24 in. And to date we haven't seen any files move through
25 phase 3.

26 MR. SAFAYENI: Now, my understanding is that there may
27 have been some activity yesterday that was at least
28 somewhat related to phase 3. Can you help explain to the

1 Panel what happened yesterday in this regard?

2 MS. COLBERG: Yes, that's right. We were informed
3 that Ensqr needed a new password to this SFTP folder on
4 June the 30th. We provided them with that. They confirmed
5 they could access the server, and they have dropped files
6 off on June the 12th, 2017 -- July the 12th, 2017.

7 MR. QUESNELLE: Can you explain that a little further?
8 Drop files off, meaning they have requested that files be
9 processed?

10 MS. COLBERG: Yes, they are provided with files on
11 behalf of their customers in the server in a request
12 folder. They're meant to be processed and put in a
13 response folder, and on July 12th, 2017 files were put in
14 the response folder, indicating they were processed.

15 MR. QUESNELLE: Thank you.

16 MR. SAFAYENI: So just to break that down a little bit
17 more, when you say provided with files in a request folder,
18 is that something that ICF did?

19 MS. COLBERG: Yes.

20 MR. SAFAYENI: How long had they been in the request
21 folder for, at least, even approximately?

22 MS. COLBERG: January 2016. That's an estimate.

23 MR. SAFAYENI: So when -- is it fair to say that when
24 applications came in ICF would put them into the request
25 folder?

26 MS. COLBERG: Yes.

27 MR. SAFAYENI: Okay. And the response folder, are you
28 aware of any applications being put in that folder prior to

1 July 12th?

2 MS. COLBERG: No.

3 MR. SAFAYENI: And could you just help us understand
4 what is the path forward from what happened yesterday to a
5 customer, if they're eligible, actually getting a credit
6 show up on their bill, so the material has been put --
7 applications have been put in the response folder.

8 How do we get from there to a credit showing up on a
9 bill if someone is eligible?

10 MS. COLBERG: Yes, by putting files in the response
11 folder at the first phase the utility has verified the
12 customer's information as they know it. So they're
13 verifying that it's a customer of Ensqr and the account
14 number and address are correct.

15 Following that phase the record is picked up by ICF
16 and sent to the Ministry of Finance. At that point they're
17 given eligibility for OESP, sent back to ICF, and then the
18 final phase, phase 3, the records are sent back to Ensqr.
19 The expectation is they would apply the credit to their
20 bill and respond to us, confirming that that's been done.

21 MR. SAFAYENI: Have you had an opportunity to actually
22 look at the responses prior to coming here today?

23 MS. COLBERG: No.

24 MR. SAFAYENI: Is that possible technically at this
25 point in time?

26 MS. COLBERG: I can't say.

27 MR. QUESNELLE: I'm sorry, I'm not quite catching the
28 meaning of that. You can't check whether or not they're

1 there or to look at them? I'm not --

2 MS. COLBERG: We can check daily. I just don't know
3 the validity of those records at this time.

4 MR. QUESNELLE: Okay.

5 MR. SAFAYENI: When you say the validity of the
6 records, can you just help me understand what you mean by
7 that?

8 MS. COLBERG: By that I mean that the responses
9 provided by Ensqr are compliant with all technical
10 specifications of the program.

11 MR. SAFAYENI: So the mere fact of filing a response
12 doesn't necessarily mean that the response is valid and
13 that you can proceed to the next stage. Is that fair?

14 MS. COLBERG: Yes.

15 MR. QUESNELLE: Just as a for-instance, if there was a
16 missing field or the information didn't line up according
17 to the protocols or something along that line -- I'm
18 searching for the proper terminology, but you can -- there
19 isn't a quality assurance, automated quality assurance,
20 that these records are aligned with your protocols just
21 because they're presented or deposited in the folder; is
22 that right?

23 MS. COLBERG: Yes, not automatically.

24 MR. QUESNELLE: Okay. Thanks.

25 MR. SAFAYENI: Ms. Colberg, if we look at Exhibit A to
26 your affidavit, which I understand to be a chart
27 summarizing communications between Ensqr and ICF, the last
28 entry on the chart is February 28th, 2017. Do you see

1 that?

2 MS. COLBERG: Yes.

3 MR. SAFAYENI: And you made reference when you were
4 discussing what happened yesterday you made reference to
5 Ensqr communicating with ICF, I think you said on June
6 30th, or a communication passing between ICF and Ensqr on
7 June 30th.

8 Are you aware of any communications between Ensqr and
9 ICF between February 28th, 2017 and June 30th, 2017?

10 MS. COLBERG: No.

11 MR. SAFAYENI: Okay. Thank you, Ms. Colberg. Those
12 are all my questions. Again, I'll provide Mr. Gunde with
13 an opportunity if he wants to ask you anything.

14 MR. QUESNELLE: Any questions, Mr. Gunde? No?

15 MR. GUNDE: No questions.

16 MR. QUESNELLE: Thank you very much. I have none
17 either.

18 Thank you very much. You're excused.

19 Okay. Mr. Safayeni, anything else?

20 MR. SAFAYENI: No, Mr. Chair. That's it for Staff's
21 case. We have no further witnesses.

22 MR. QUESNELLE: Thank you. Mr. Gunde, I understand
23 you're here and you're not legally represented, but I would
24 ask if you would have evidence you would like to provide
25 that you enter the witness box and I would affirm you and
26 then we'll go from there, okay?

27 MR. GUNDE: Sure.

28 ENSQR CORPORATION - PANEL 1

1 **Harshal Gunde, Affirmed.**

2 MR. QUESNELLE: Okay. Mr. Gunde, whenever you're
3 ready, just -- I've seen previous correspondence that you
4 intend to just provide us with an overview of the status.

5 Now, I would caution you. We have some written
6 submissions from you or written evidence. I haven't taken
7 it as evidence as of yet, but we have some correspondence
8 which contain some identification of individuals. So I
9 just ask you to not on the record use any individuals'
10 names or identification of any particular customers or
11 clients or, just to be safe, even the companies you have as
12 your clients at this point, and just for -- if we need to
13 do anything we can go into -- in camera and talk about
14 anything which is confidential, but at this juncture I
15 don't think that's required.

16 MR. GUNDE: Understood.

17 MR. QUESNELLE: Thank you.

18 **DIRECT EVIDENCE BY MR. GUNDE:**

19 MR. GUNDE: Okay. Sorry, this is the first time I've
20 come to such a hearing, and I don't have a legal
21 background. I'm more of an environmental engineer.

22 Ensqr as a company, we primarily do -- I just wanted
23 to give a background if that was okay.

24 MR. QUESNELLE: No, that would be very helpful,
25 actually. Thank you.

26 MR. GUNDE: Sure. So we primarily do energy
27 efficiency services, energy audit services for mainly our
28 commercial clients. It's like steel plants, the auto parts

1 manufacturers. We also provide some metering services, not
2 which are revenue-generating, but for larger plazas which
3 are owned by one customer, and then they want to understand
4 who are their tenants and what is their use. It was more
5 of a non-billing kind of activity which we provide.

6 Of course, along with that came about this client who
7 owns the building, and this is kind of our only residential
8 customers with the sub-metering contract that we are --
9 that we were doing the services previously.

10 MR. QUESNELLE: Just so we're clear on that, we do
11 have correspondence and it's not dated, but I understand we
12 received it on June 8. And this references -- it's to the
13 OEB enforcement team and we're providing a brief
14 explanation of the sequence of events, that particular
15 letter.

16 MR. GUNDE: Sure.

17 MR. QUESNELLE: And we have not redacted -- there are
18 attachments to it that will require some redaction, but I
19 think it's probably -- can we give that an exhibit number
20 at this time, Mr. Sidlofsky?

21 MR. SIDLOFSKY: Yes, we can. Why don't we mark that
22 Exhibit K1.2. But before it's placed anywhere on the
23 record, we would have to ensure that appropriate redactions
24 are made.

25 **EXHIBIT NO. K1.2: CORRESPONDENCE FROM ENSQR TO OEB**
26 **ENFORCEMENT TEAM RECEIVED JUNE 8**

27 MR. QUESNELLE: Thank you.

28 MR. SAFAYENI: Mr. Chair, just for clarity, are we

1 marking the exhibit and all the attachments? I take it
2 from Mr. Sidlofsky's comment that's what's happening, but I
3 want to be clear.

4 MR. QUESNELLE: Yes, let's do that, the letter and
5 attachments. And will be placed on the public record once
6 proper redactions have taken place. We may -- well, we'll
7 work with you on that, Mr. Gunde. But we may have to have
8 you refile.

9 So in that correspondence, you referred to it's a
10 small sub-metering company with a few clients. The other
11 clients, other than this one, the ones that you have for
12 sub-metering on a non --

13 MR. GUNDE: Billing.

14 MR. QUESNELLE: -- non-billing basis?

15 MR. GUNDE: This is the only client we have on a
16 billing basis.

17 MR. QUESNELLE: I understand.

18 MR. GUNDE: We started with them, and then started
19 administering the program. OESP came along, and then we
20 started implementing it.

21 The customer and we had to set up even the accounts
22 with the Ministry, the customer and the owner of that
23 corporation. It was not a very cooperative way of getting
24 it done for them to set up their account and get the refund
25 back, so it took us a while to start implementing OESP on
26 our side.

27 MR. QUESNELLE: How many residential customers are we
28 looking at?

1 MR. GUNDE: As of now -- last year in June, there were
2 86 customers, residential customers, out of which 12 of
3 them had applied for OESP and quite a few of them had also
4 applied for the LEAP program. That is where the reference
5 to the LEAP program came.

6 MR. QUESNELLE: I understand, thank you.

7 MR. GUNDE: We got the notice. We had the issues
8 where we were not in compliance, and we started complying.
9 If you look at the correspondence with ICF, around
10 September of last year we started coming close to actually
11 implementing it after paying the fines and doing the
12 technical side.

13 Around September 15, we started hearing issues with
14 the customer planning to sell the building, and that our
15 services would be no longer required at the building.

16 MR. QUESNELLE: Can you explain to me what happens
17 when that occurs? You have a contract with the previous
18 owner.

19 MR. GUNDE: Yes.

20 MR. QUESNELLE: What happens to the assets? What
21 happens to your equipment?

22 MR. GUNDE: Usually, they have to pay for it and then
23 we come out of it and we have nothing to do with it, or
24 they ask the new landlord to start implementing or take
25 over the contract, which is what started happening. And
26 then we didn't hear anything. And on October 26, the
27 previous owner was out of the building and we -- even until
28 today, we don't have a contract with the new owners.

1 MR. QUESNELLE: What's happening with the 86
2 customers?

3 MR. GUNDE: So now the 86 customers has gone to 72 of
4 them because of people moving out. We haven't -- we have
5 been collecting data; we have been keeping the bills ready.
6 But we haven't enforced anything unless we are sure we have
7 a contract with them.

8 The new property manager has sent contracts and we
9 have negotiated how we are going to bill it, because it's
10 quite different from the previous contract. However, this
11 notice coming in February, we haven't really gone ahead and
12 signed it off because we don't know what's happening with
13 our licence. And since October 26 till today, the
14 customers have not been -- they have been presented a bill,
15 but there is no demand for payment and nobody has paid
16 since then.

17 MR. QUESNELLE: These are 72 customers as it stands
18 now?

19 MR. GUNDE: Yes.

20 MR. QUESNELLE: When it went from 86 down to 72, were
21 people billed as they left?

22 MR. GUNDE: Sorry.

23 MR. QUESNELLE: It's gone from 86 customers down to
24 72. Were there any bills issued as final payments as
25 tenants were leaving?

26 MR. GUNDE: No, we didn't even know that they left.
27 Only recently we were trying to get to a point where we
28 know the new customers and how we're going to finalize the

1 contract with the new property that we came to know there
2 were 72 of them. And of them -- as you've heard that we
3 have recently processed the files mainly to get to us to a
4 point where we could do the OESP, and this is what we're
5 trying to do so that once -- let's say we go ahead with the
6 contract, we are able to give them a credit from the day
7 that they filed.

8 So the earlier -- we have, out of the 72, 12 people
9 who had applied for whom we have processed the OESP files
10 and sent it.

11 MR. QUESNELLE: Are those the ones referred to --

12 MR. GUNDE: Yes.

13 MR. QUESNELLE: Submitted yesterday?

14 MR. GUNDE: Yes. And the other thing is for them,
15 according to the previous enforcement of the last year's
16 notice, we are giving them credits since the day they
17 applied. That is what we had agreed in the past, and we
18 want to go ahead and do that.

19 The only thing is we are not able to bill anybody or
20 enforce the billing, unless we finalize the contract with
21 the new property owner.

22 MR. QUESNELLE: Okay. Thank you for that. If you
23 want to carry on with more information.

24 MR. GUNDE: Sure. I understand the revocation of
25 licence and proceedings which were started by the OEB.
26 What we wanted to tell is we -- if the business as usual
27 would have happened, I think, in October of last year, we
28 would have complied with all the requirements. But just

1 from our business end, we didn't know if we have customers
2 or we don't have customers, and that's why we are still
3 stuck since last year, October.

4 Once we are -- once we know whether we can continue
5 with the licence, we'll be going back, finalizing the
6 contract and giving the customers the credit, and moving
7 forward.

8 MR. QUESNELLE: Is there any -- I recognize we're
9 getting a lot of information today. But I think the
10 compliance requirements, the voluntary compliance, one of
11 the items in there was one which was -- I read as being
12 designed to exactly avoid where we are today, is to get
13 ongoing information. This type of information could have
14 come in the monthly reports, could they not, as to what
15 your status was, the arrangements.

16 I think that it strikes me that part of the
17 frustration of the compliance team is that they were in the
18 dark as far as what was happening. Is there any rationale
19 for not supplying the reports?

20 MR. GUNDE: Once we got the disconnection, I think it
21 was verbally communicated that we may no longer have any
22 customers last year.

23 MR. QUESNELLE: Okay.

24 MR. GUNDE: And for us, it's like we don't have any
25 customers for to us do anything. And even now, even the
26 OESP files that we uploaded were just because we were
27 trying to meet the technical requirements, it still doesn't
28 mean we can go ahead and bill them unless we have a

1 contract.

2 MR. QUESNELLE: And this may or may not be your
3 responsibility, but do you know if the customers are aware
4 that they have an outstanding amount of balances? You say
5 they're being presented bills, but no one is paying.

6 MR. GUNDE: Yes.

7 MR. QUESNELLE: But there will be a day when payment
8 will be required. Are they getting a running total of
9 this?

10 MR. GUNDE: Yes, we are providing that. We are
11 providing that even to the current building owner, because
12 we don't want to leave them in the dark, and we are giving
13 them. They're changing a lot of the service charges that
14 we used to charge in the previous bill. It's changing
15 quite a lot with the new owners. So that is also becoming
16 an issue which they have to -- there are a lot of -- just
17 to explain, there are a lot of low-income families here,
18 and the way the new owner wants us to provide our service
19 charges, the service charges are becoming equal to the
20 electricity bill.

21 So they are also having an issue of whether that
22 should be the charge, and if they are changing it. So
23 that's why we haven't finalized the contract.

24 MR. QUESNELLE: Understood. Thank you. Sorry, I keep
25 interrupting you.

26 MR. GUNDE: From our side, of course we understand
27 that we are in -- we have issues with our technical
28 implementation, but our intent is not to leave anybody out

1 of the monetary benefits of the OESP, and we will be
2 crediting them that amount, and that we have agreed with.

3 The only thing I would request is if we could continue
4 with the licence because -- and then bill them and finalize
5 the contract, so that we can actually finish this process
6 and move forward.

7 MR. QUESNELLE: Mr. Safayeni, can you explain to me
8 the flow of the dollars here? I take it this building is
9 bulk-metered as well.

10 MR. GUNDE: Yes.

11 MR. QUESNELLE: Who pays who in this arrangement?

12 MR. GUNDE: Okay. So this is kind of an arrangement
13 that we had. The bulk meter is paid by the landlord. What
14 happens is we bill the customers. We provide them, this is
15 what the bill has to be, this is our service charges, and
16 once the customers pay us the bill we take our -- whatever
17 our service charges are paid, and we pay everything else to
18 the landlord back.

19 MR. QUESNELLE: Thank you.

20 MR. GUNDE: What I would request is, like, is whether
21 we can go ahead and finish our compliance and then go ahead
22 and implement the OESP process as the billing process,
23 because right now everything is kind of at a standstill
24 until we finalize this hearing, and then we go back, and
25 right now this is the only customer we have for
26 residential, and going forward -- we are continuing our
27 commercial work, but there is nothing to do with OESP or
28 billing services there.

1 MR. QUESNELLE: I understand.

2 Do you have anything else that you -- I'm going to
3 open it up to Mr. Safayeni to have any questions, if he
4 does.

5 MR. GUNDE: I just wanted to present my side.

6 MR. QUESNELLE: I understand. Thank you.

7 Mr. Safayeni, any questions?

8 **CROSS-EXAMINATION BY MR. SAFAYENI:**

9 MR. SAFAYENI: Only a few, Mr. Chair. Mr. Gunde, in
10 the letter that you provided to the Board that's been
11 marked as Exhibit K.1.2 -- do you have that in front of
12 you?

13 MR. GUNDE: Yes.

14 MR. SAFAYENI: Okay. At the end of the third
15 paragraph you say:

16 "We started with some sample cases, and since our
17 company is very small we did not have enough
18 resources to completely test the system in time."

19 Do you see that?

20 MR. GUNDE: Yes.

21 MR. SAFAYENI: How many employees does Ensqr have?

22 MR. GUNDE: As of right now just two employees, full-
23 time.

24 MR. SAFAYENI: Any part-time employees?

25 MR. GUNDE: We have part-time contract employees,
26 which mainly come from our energy audit work.

27 MR. SAFAYENI: Okay. So that's not related to --

28 MR. GUNDE: Yes.

1 MR. SAFAYENI: -- OESP, correct?

2 MR. GUNDE: Yes.

3 MR. SAFAYENI: And has the number of employees changed
4 since January 1st, 2016?

5 MR. GUNDE: Yes.

6 MR. SAFAYENI: Okay. How many employees?

7 MR. GUNDE: We were five in January 2016. We have
8 reduced the full-time employment. And for the billing
9 technical activity we have also outsourced it to our
10 technical provider.

11 MR. SAFAYENI: Who is that?

12 MR. GUNDE: That's a software company, PHDS
13 Incorporated.

14 MR. SAFAYENI: When was that done?

15 MR. GUNDE: Last year, once we started implementing
16 the order.

17 MR. SAFAYENI: Do you have a more specific date for
18 me?

19 MR. GUNDE: Around June of 2016.

20 MR. SAFAYENI: And which employees have
21 responsibilities related to OESP?

22 MR. GUNDE: As of this moment, myself has the full
23 response (sic). Previously there were two others, but no
24 longer with the company.

25 MR. SAFAYENI: And since the assurance of voluntary
26 compliance in August 2016, has it only been you with that
27 responsibility or have there been others?

28 MR. GUNDE: Responsibility is mine, but the other

1 employees have helped out, but I've been responsible.

2 MR. SAFAYENI: Okay. So there were -- the assurance
3 of voluntary compliance was accepted on August 3rd, 2016.
4 At that point in time there were other employees who also
5 had OESP responsibilities?

6 MR. GUNDE: Yes, one more.

7 MR. SAFAYENI: One more. When did they leave?

8 MR. GUNDE: November.

9 MR. SAFAYENI: And since that time it's just been you?

10 MR. GUNDE: Yes. Primarily after the contract was
11 cancelled there was no point, like, in October we didn't
12 know.

13 MR. SAFAYENI: Right. The contract with the old --

14 MR. GUNDE: Yes, October 26th they terminated the
15 contract.

16 MR. SAFAYENI: Right. Do you have a copy of Exhibit
17 K1.1 there with you, my enforcement brief? Do you have
18 one?

19 MR. GUNDE: It's there.

20 MR. SAFAYENI: If you turn to tab 1B of that exhibit
21 and go to page 27 --

22 MR. GUNDE: Yes.

23 MR. SAFAYENI: -- you see an e-mail exchange here with
24 ICF, correct?

25 MR. GUNDE: Yes.

26 MR. SAFAYENI: And in the e-mail exchange you were
27 asking for a password, right?

28 MR. GUNDE: Yes.

1 MR. SAFAYENI: And I gather the password grants you
2 access to a site that will let you access customer
3 applications?

4 MR. GUNDE: Yes.

5 MR. SAFAYENI: So presumably here you're asking for
6 the password so you can go and review those applications,
7 correct?

8 MR. GUNDE: Yes, since February the new owner wanted
9 to look at all the customers who had applied because of all
10 the things -- like, they had a few conversations with, I
11 think, OEB as well, and they wanted to know who are the
12 people eligible and who are the new -- who are the
13 customers who had the contracts, and that's what we started
14 confirming with them, because by February they -- 'til
15 February we were said they wouldn't continue with us, and
16 from February they said, Okay. We will continue with you.
17 That's when we started looking at it.

18 MR. SAFAYENI: These are the new owners that --

19 MR. GUNDE: Yes, because they're a larger company, and
20 they were -- they are exclusively -- they were exclusively
21 tied up with another sub-metering provider for their other
22 properties, and that's what they wanted to bring over. But
23 then February, because it was becoming difficult, they
24 asked us to start looking at continuing it.

25 MR. SAFAYENI: Okay. And the new owners, just to make
26 sure we're clear, is that [REDACTED]

27 MR. GUNDE: Yes.

28 MR. SAFAYENI: Okay. And I understand you said that

1 there's no written contract as of yet.

2 MR. GUNDE: Yes.

3 MR. SAFAYENI: But it's my understanding that there
4 was kind of an oral agreement that until the written
5 contract was concluded things would kind of continue as
6 they were under the old arrangement; is that fair?

7 MR. GUNDE: They asked us to do it, but I think,
8 looking at the sub-metering, the sort of the act and the
9 rules, we did not want to continue and enforce the bills,
10 but just give it as an information until we had a written,
11 signed contract, especially with the service charges,
12 because we haven't agreed on it.

13 MR. SAFAYENI: Okay. So -- and so you landed on this
14 -- this is my term -- this middle ground of kind of
15 providing the bills but not requiring payment?

16 MR. GUNDE: Correct.

17 MR. SAFAYENI: Okay. And those bills that you
18 provided obviously didn't reflect any OESP credit, correct?

19 MR. GUNDE: They did not reflect any OESP credit, but
20 for all the OESP customers that we have access we have
21 given them like this, that since the day of their
22 eligibility or the application they will be provided
23 credits as per the requested letter from the previous
24 notice that we had.

25 So we have been giving them letters saying, this is
26 your expected bill. The OESP credit will be provided to
27 you from the day of you -- your eligibility, which is sort
28 of around the date they applied, and we have been giving

1 them the letters along with the bill.

2 MR. SAFAYENI: Okay. I'll come back to the letter in
3 a moment, but just to make sure I have a clear answer to my
4 question --

5 MR. GUNDE: Sure.

6 MR. SAFAYENI: -- there is no actual credit amount
7 shown on these --

8 MR. GUNDE: No, we cannot until we get the files back.

9 MR. SAFAYENI: Right.

10 MR. GUNDE: And also for that we have to set up the
11 account, because in this case, since we give the money back
12 to the landlord, they wanted to set up the credit back from
13 the Ministry of Finance to their account, so that also has
14 to be set up.

15 MR. SAFAYENI: Right. When you talk about the letter,
16 if you still have my brief in front of you and you go to
17 tab 2B, is this the letter you're talking about at the very
18 end of that tab?

19 MR. GUNDE: Appendix A, 113, right?

20 MR. SAFAYENI: Yes.

21 MR. GUNDE: So it's in the same format, yes.

22 MR. SAFAYENI: And you sent this to everybody --

23 MR. GUNDE: All the current customers who had applied
24 for OESP.

25 MR. SAFAYENI: Okay. Now, how would you know -- this
26 letter appears to be designed for people who are eligible
27 customers, correct?

28 MR. GUNDE: Yes.

1 MR. SAFAYENI: How would you know a customer was
2 eligible before the application has been processed?

3 MR. GUNDE: When they apply and we get it in the
4 request files on the interface, we can see their names and
5 we have to confirm, yes, these customers do exist. That
6 means we are expecting them to be eligible, and that's why
7 we've been giving them the letters.

8 MR. SAFAYENI: They've applied for the program,
9 correct?

10 MR. GUNDE: Yes.

11 MR. SAFAYENI: But I could apply for the program, but
12 it's possible I would not be ultimately eligible once the
13 processing has been carried out.

14 MR. GUNDE: Yes.

15 MR. SAFAYENI: You provided this letter to everybody
16 who applied for the program?

17 MR. GUNDE: Yes.

18 MR. SAFAYENI: And when did you provide this letter?

19 MR. GUNDE: In March, April, May, along with the
20 record of the ratings and how much the bill would be, we
21 provided the letter to them along with the bill.

22 MR. SAFAYENI: Okay. So for each informational bill
23 that was presented --

24 MR. GUNDE: Yes.

25 MR. SAFAYENI: -- a copy of this letter was attached
26 to it?

27 MR. GUNDE: Yes.

28 MR. SAFAYENI: That's not information you provided to

1 anybody at the Board, correct?

2 MR. GUNDE: No.

3 MR. SAFAYENI: Okay. Mr. Gunde, if we turn back to
4 your letter and the attachments at Exhibit K1.2, the letter
5 dated October 26, 2016, from [REDACTED]; do you
6 see that in front of you?

7 MR. GUNDE: Yes.

8 MR. SAFAYENI: Is there a signed version of this
9 document?

10 MR. GUNDE: Yes.

11 MR. SAFAYENI: Okay. Why didn't you provide that?

12 MR. GUNDE: I missed that. I could provide the signed
13 copy.

14 MR. SAFAYENI: Okay. How did you receive this
15 particular letter? Did you receive it -- by that, I mean
16 did you receive it by e-mail or by normal --

17 MR. GUNDE: Initially by e-mail, and a month before
18 this, we were already told this is what is happening,
19 there is a new ownership coming in. We don't know whether
20 they will continue or not.

21 MR. SAFAYENI: Okay.

22 MR. GUNDE: End of September.

23 MR. SAFAYENI: But this letter itself, you received --
24 did you receive it by e-mail on October 26?

25 MR. GUNDE: Yes.

26 MR. SAFAYENI: Or was it after that date?

27 MR. GUNDE: We were given the notice probably one or
28 two days after that by e-mail.

1 MR. SAFAYENI: By e-mail.

2 MR. GUNDE: But on October 26, the new owner was no
3 longer at the building and they said okay, we're out of it.

4 MR. SAFAYENI: You told me there was a signed copy;
5 did the signed copy come afterwards?

6 MR. GUNDE: Yes.

7 MR. SAFAYENI: By normal mail?

8 MR. GUNDE: I picked it up. The owner -- hand
9 delivered.

10 MR. SAFAYENI: Hand delivered, okay. And my
11 understanding is neither the signed copy nor this copy have
12 been provided to the Board, is that correct? You provided
13 it in the context of this hearing, but prior to filing this
14 document, it's not something that we've seen.

15 MR. GUNDE: I don't recollect.

16 MR. SAFAYENI: Okay. Mr. Gunde, I'm going to show you
17 a document that's an e-mail exchange. You can take a
18 moment to read it and then I'll ask you a couple of
19 questions, okay?

20 MR. GUNDE: Okay.

21 MR. QUESNELLE: Thank you.

22 MR. SIDLOFSKY: Sorry, Mr. Safayeni, do you have an
23 extra copy of that?

24 MR. SAFAYENI: I do.

25 MR. SIDLOFSKY: Thank you.

26 MR. QUESNELLE: Do you want to enter this as an
27 exhibit?

28 MR. SAFAYENI: I'll give the witness an opportunity to

1 identify it, and then perhaps we can do that as a next
2 step.

3 Mr. Gunde have you had a chance to look at this now?

4 MR. GUNDE: Yes.

5 MR. SAFAYENI: Do you recognize this document?

6 MR. GUNDE: Yes.

7 MR. SAFAYENI: Can you describe it for me, please, or
8 tell me what it is?

9 MR. GUNDE: Yes, so --

10 MR. SAFAYENI: Let me make it easier for you -- and
11 you can take an issue with my description, if you want.

12 This appears on its face to be an e-mail exchange
13 between you and one other individual at Ensqr, Krishna
14 Punam, and ICF regarding various issues between June 30,
15 2017, and July 12, 2017. Is that a fair description?

16 MR. GUNDE: Yes.

17 MR. SAFAYENI: I would ask that we mark this as the
18 next exhibit, K1.3.

19 MR. QUESNELLE: Yes. We will do so, thank you.

20 **EXHIBIT NO. K1.3: E-MAIL EXCHANGE BETWEEN HARSHAL**
21 **GUNDE AND KRISHNA PUNAM AND ICF REGARDING VARIOUS**
22 **ISSUES BETWEEN JUNE 30, 2017, AND JULY 12, 2017**

23 MR. SAFAYENI: Can you just explain to me, Mr. Gunde,
24 what led you on July 7th -- this is at page 3 of the chain
25 -- sorry, actually if we go to page 4 of the chain, on June
26 30th is your first response to OESP support. Can you just
27 take me through what led you to get in touch with OESP
28 support on that date, and why you continued to have an

1 exchange with them from then until July 7th, in your own
2 words?

3 MR. GUNDE: The whole issue with -- if I can say
4 [REDACTED], we had been trying different ways of producing their
5 bills with the outsourced technical service provider. And
6 we moved our service around on June 30th to newer systems,
7 and that's where we have to have the access to the
8 production to look at the OESP files, and that's where the
9 e-mail conversation started, because we needed the new
10 service to be added for security reasons, to the ICF
11 processing site.

12 MR. SAFAYENI: ICF did e-mail you first, though,
13 correct?

14 MR. GUNDE: No.

15 MR. SAFAYENI: If we look at the bottom of that chain,
16 we have an e-mail from OESP support to Krishna Punam
17 copying you. That's the beginning of the chain.

18 MR. GUNDE: Sorry, yes. So --

19 MR. SAFAYENI: You're not aware of an e-mail from
20 Ensqr to ICF before this date that's not on this chain,
21 correct?

22 MR. GUNDE: No, no, no. Because once they served, we
23 tried to test it, but we couldn't get access because our
24 service had moved, so we asked them to put the new IP
25 addresses for us to access it.

26 MR. SAFAYENI: Mr. Gunde, you described earlier that
27 Ensqr is also involved in other lines of business, if I can
28 put it that way. I think you say that you -- I think you

1 said you primarily do energy efficiency and audit services
2 mainly for commercial clients, correct?

3 MR. GUNDE: Yes.

4 MR. SAFAYENI: Is that something you yourself are
5 involved in as well?

6 MR. GUNDE: Yes.

7 MR. SAFAYENI: Okay. Is that what takes up the bulk
8 of your time?

9 MR. GUNDE: Yeah, I could say that. It's about, I
10 could say, 80 percent of the time.

11 MR. SAFAYENI: Those are all the questions I have, Mr.
12 Chair.

13 **QUESTIONS BY THE BOARD:**

14 MR. QUESNELLE: Thank you. Mr. Safayeni, just -- I'm
15 a little lost here in one of the records that you referred
16 to earlier. Can we go back to -- in your enforcement team
17 brief here, and back to B -- where are we here -- 2B?

18 MR. SAFAYENI: Yes.

19 MR. QUESNELLE: 2B? Okay. So we've got the, on page
20 107, the assurance of voluntary compliance.

21 MR. SAFAYENI: Correct.

22 MR. QUESNELLE: Okay. And we have Appendix A to that.

23 MR. SAFAYENI: Yes.

24 MR. QUESNELLE: So the assurance of voluntary
25 compliance filed August 2nd, and the appendix, I
26 understood, Mr. Gunde, you're referencing this, and the
27 time frame that you mentioned that this letter was issued
28 to the clients, to the customers at that location, is that

1 this past spring that you would have been supplying that,
2 this letter?

3 MR. GUNDE: Yes.

4 MR. QUESNELLE: How did the two become attached? I'm
5 confused here. Where did we first see this letter then?

6 MR. SAFAYENI: So the provision of Appendix A to
7 consumers who were actually eligible for the OESP credit is
8 a condition of the assurance. The assurance in condition 6
9 says Ensqr will send a letter in the form attached as
10 Appendix A to this assurance of voluntary compliance to all
11 eligible customers waiting for rate assistance for the
12 OESP.

13 MR. QUESNELLE: Okay. When you were questioning as to
14 them being eligible, not -- this is the compliance team's
15 wording that we're speaking here?

16 MR. SAFAYENI: Correct. Correct.

17 MR. QUESNELLE: All right.

18 MR. SAFAYENI: I mean, I think -- and perhaps it's
19 more a matter of argument, but just briefly, I mean, I
20 think what the assurance contemplated was that the
21 processing would be up and running, we would have some sort
22 of understanding of who was actually eligible, and then
23 those customers would receive this letter advising them
24 that they would get this one-time adjustment.

25 MR. QUESNELLE: After their eligibility had been
26 determined and because of the way --

27 MR. SAFAYENI: Yes.

28 MR. QUESNELLE: -- that this has come about, this is

1 being provided in advance of them being eligible.

2 MR. SAFAYENI: Correct.

3 MR. QUESNELLE: That was the source of my confusion.
4 Okay. I understand. Thank you. Okay. Mr. Gunde, I have
5 no further questions. Thank you very much for your
6 appearance here today and your testimony.

7 Mr. Safayeni, at this point are you prepared to make
8 submissions, or how would you like to proceed?

9 MR. SAFAYENI: Yes, Mr. Chair. I would be grateful
10 for a very brief break, but if the Panel -- if you're
11 prepared to proceed with submissions, I'm ready to do so
12 orally here today, and that may be the most efficient way
13 of proceeding. If the preference is to have closing
14 written submissions filed later, I'm happy to do that as
15 well, but I'm certainly prepared to proceed.

16 MR. QUESNELLE: Mr. Gunde, do you have a preference?
17 What will happen, Mr. Safayeni will provide his closing
18 submissions, at which time you would have an opportunity to
19 respond to those and provide any closing submissions you
20 have. And then Mr. Safayeni would have the opportunity to
21 reply to those.

22 So we can do that orally today? Are you in agreement
23 with that?

24 MR. SAFAYENI: Absolutely.

25 MR. QUESNELLE: We can do that orally today or we
26 could do it over the next week or so in writing. And do
27 you have a choice one way or the other? Perhaps in total
28 fairness to you, if, Mr. Safayeni, if you were to provide

1 your closing arguments in-chief, and then we'll ask Mr.
2 Gunde whether or not he wants to respond orally or take
3 some time and think about it and respond in writing?

4 MR. SAFAYENI: I'm happy to proceed that way as well.

5 MR. GUNDE: Sure.

6 MR. QUESNELLE: Let's do it that way? Okay. Why
7 don't we take a recess until 11:15.

8 MR. SAFAYENI: Thank you.

9 MR. QUESNELLE: Okay. Thank you very much.

10 --- Recess taken at 10:50 a.m.

11 --- On resuming at 11:27 a.m.

12 MR. QUESNELLE: Mr. Safayeni, whenever you're ready.

13 MR. SAFAYENI: Thank you, Mr. Chair. If I can deal
14 with one matter at the outset.

15 You may recall I asked Mr. Gunde if he provided anyone
16 with at Board Staff with a copy of the termination notice
17 that he presented as part of his materials, and on the
18 stand he answered that he couldn't recall.

19 During the break, we both looked at our respective
20 records. He looked at his e-mails and Ms. Marijan looked
21 at hers, and it turns out on November 16th, that document
22 actually was provided.

23 So to ensure that the record is accurate and to be
24 fair to my friend, I realize the evidentiary portion has
25 technically closed. But I've discussed it with Mr. Gunde,
26 and I would propose to enter simply the e-mail as an
27 exhibit. I don't think we need to talk about it or ask
28 further questions, but just to make sure the record is

1 clear.

2 THE COURT: That's an important clarification. Thank
3 you, yes.

4 MR. SAFAYENI: I think we'll mark this as Exhibit
5 K1.4.

6 EXHIBIT NO. K1.4: E-MAIL DATED NOVEMBER 16, 2016

7 MR. QUESNELLE: That's correct.

8 MR. SAFAYENI: If I can approach, I'll provide you
9 with a copy. I only with one copy right now.

10 MR. QUESNELLE: That's fine. Any requirement for
11 confidentiality on this one?

12 MR. SAFAYENI: I don't believe so.

13 MR. QUESNELLE: Thank you very much.

14 **CLOSING SUBMISSIONS BY MR. SAFAYENI:**

15 MR. SAFAYENI: With that I'll turn to my closing
16 submissions. I have a book of authorities and one loose
17 case which I unfortunately did not -- was not able to
18 include in the book of authorities.

19 I provided both to my friend over the break, and it
20 might assist you with my submissions if I provide you with
21 a copy as well.

22 MR. QUESNELLE: Thank you very much. Thank you.

23 MR. SAFAYENI: The allegation in this case is quite
24 simple, Mr. Chair. It's that Ensqr breached the assurance
25 of voluntary compliance that it provided to the Board on
26 August 2, 2016, and the Board accepted August 3, 2016. And
27 as you'll know, these assurances, once accepted, have the
28 same force and effect as an order of the Board pursuant to

1 section 112.7(2) of the Energy Board Act. So the
2 allegation is really that Ensqr breached a Board order.

3 In particular, we say that Ensqr failed to comply with
4 nine of the ten terms of the assurance, everything except
5 the payment of the monetary penalty. The monetary penalty
6 was paid late, but that's not a big deal considering the
7 rest of the issues here.

8 And to be frank, I'm not sure there's too much
9 disagreement on the fact that the terms of the assurance
10 were breached -- although, of course, my friend will have
11 an opportunity to address that. I think really where the
12 parties part ways is on whether revocation is an
13 appropriate sanction in these circumstances.

14 Staff's position is that it's really the only
15 appropriate sanction in this case, given the history,
16 nature and extent of Ensqr's breaches when it comes to
17 enforceable provisions of the Act, the impact of those
18 breaches on vulnerable customers and the risk of further
19 breaches in the future. Those are really the three reasons
20 that we say revocation is appropriate.

21 I'll start by taking you through the history of
22 Ensqr's conduct briefly. You have the written materials
23 and I'm not going to do it in exhaustive detail. But what
24 you see when you look at that history of conduct, in my
25 submission, is a track record of missed deadlines,
26 breaching Board orders, failing to provide information when
27 requested, ignoring offers of help, and ultimately being
28 unwilling or at least unable to meet the legal obligations

1 required of a unit sub-metering provider.

2 If we go back in time, you may recall from the
3 assurance that it references the fact that utilities first
4 got notice of the OESP coming into effect back on August
5 10, 2015. And there were three dates set for the self-
6 certification reports that Ms. Marijan talked to you about.
7 Those dates were August 26, 2015, September 28, 2015, and
8 November 30, 2015.

9 We didn't receive any reports from Ensqr on those
10 dates and in fact, those reports have never been received;
11 so those deadlines were missed.

12 January 1, 2016, was when the program was supposed to
13 come on line, and eligible customers, low income customers
14 were supposed to be able to start seeing those credits
15 reflected as of that date. It will be obvious to you from
16 the hearing that that didn't happen.

17 Eight months later, on August 3, 2016, we have the
18 assurance of voluntary compliance completed. On August 12,
19 2016, that's the deadline in the assurance of voluntary
20 compliance. It might be useful for the purposes of the
21 discussion actually if you had the compliance in front of
22 you. It's tab 2B, page 110 of the record.

23 August 12th is when the self-certification report was
24 supposed to be submitted under condition 1; that didn't
25 happen. And in fact, as I say, it still hasn't been
26 received.

27 August 12th was also the deadline under condition 3 of
28 completing the self-validation portal. That's essentially

1 a tool that would demonstrate Ensqr's ability to meet some
2 technical requirements vis-a-vis ICF; that didn't happen.
3 It wasn't completed until August 31, 2016, almost three
4 weeks late.

5 And what's actually remarkable about this if you look
6 at the e-mails -- and I won't take you there, but I'll give
7 you the reference -- is that Mr. Gunde didn't even bother
8 e-mailing ICF about the self-validation portal issue until
9 August 21, 2016, more than a week after the August 12th
10 deadline. You can see the actual e-mail chain at tab 1B,
11 page 29. I don't propose to take you there now, but it's
12 plain from the e-mail chain that there's a gap for well
13 over a week after the August 12th deadline comes and goes.

14 Even once the portal was eventually completed on
15 August 31st, Ensqr never advised the Board this had been
16 done. So the Board was unaware of this development. If we
17 look at other terms of the assurance, conditions number
18 two, number four, number seven, all pertain to the
19 processing of applications, and of course that didn't
20 happen, and it still hasn't really happened. I mean, we've
21 had one step on the road to applications being fully
22 processed, which occurred yesterday. But as you heard from
23 Ms. Colberg, the validity of those responses still has not
24 been examined, and certainly the remaining steps in terms
25 of sending it to the Ministry, getting their approval,
26 coming back, sending it back to Ensqr, none of that has
27 happened.

28 If we look at term five of the assurance, it sets a

1 deadline to file a report with the Board. And the deadline
2 there, it's not set out by way of date, but if you look at
3 the end of paragraph 5 you'll see it says within six weeks.
4 So the report was to be provided within six weeks of the
5 date of the assurance being accepted, so that's on
6 September 13th.

7 And this report was designed to provide the Board with
8 some comfort that Ensqr had taken the necessary steps to
9 process applications and they had determined who was
10 entitled to a credit, the amount of the credit, the amount
11 of the adjustment, et cetera, et cetera, et cetera. I
12 mean, this is a step that could not be completed unless the
13 applications had actually been processed just by virtue of
14 the information required in the report.

15 And again, we've never seen such a report from Ensqr
16 because of course no applications were processed by that
17 date, and still, despite the steps taken by Ensqr
18 yesterday, we're not at that point.

19 And again, if we look at the communications between
20 Ensqr and ICF during the period leading up to this
21 deadline, before and after this September 13th deadline, we
22 see a picture of an entity that's just simply not taking
23 its obligation seriously, not prioritizing the need to meet
24 the Board-ordered deadline. We see repeated requests by
25 ICF for updates from Ensqr, repeated offers from ICF to
26 help Ensqr, and we see Ensqr being virtually non-
27 responsive.

28 And in this case -- I don't want to get too lost in

1 the e-mails, but I think it actually is useful to look at
2 this exchange to get a flavour for what I'm talking about
3 here.

4 So I would ask you to turn to tab 1B of Exhibit K1.1,
5 at page 31 of that tab. The e-mail chain is quite lengthy,
6 but I'm going to start from September 9th, which is at the
7 bottom of page 31. Remember, September 13th is the
8 deadline to have the report, the deadline to have
9 processing complete so we can put the information in the
10 report together and file it with the Board.

11 The September 9th, Mr. Gunde says:

12 "Hello, team."

13 This is to OESP support, which is the ISF folks.

14 And then if you turn the page to page 32 he says:

15 "This is the error we are getting."

16 And he attaches an error message.

17 September 9th, back on page 31, the support team says:

18 "Harshal, can we confirm again what the source IP
19 for the SFTP requests are coming from."

20 September 12th:

21 "Hi, Harshal. Have you been able to connect? If
22 not, can you please see the request below and
23 provide us with the IP source for the SFTP
24 requests are coming from (sic)."

25 September 13th. This one's from Ms. Colberg:

26 "Hello, Harshal. Can you please see the below
27 request for information and provide this as soon
28 as possible, as we're eager to have some

1 applications processed for Ensqr customers."

2 September 13th, Mr. Gunde responds:

3 "Hello, Jessie. We've been able to successfully
4 receive all the files. We'll process them and
5 upload the responses as soon as our billing
6 system processes it."

7 So we get a response there. And then we keep reading
8 in the chain, later on September 13th:

9 "Great news, Harshal. Thank you. Can you please
10 keep us updated anything else you need in order
11 to process these."

12 The next e-mail is from September 16th, again from Ms.
13 Colberg:

14 "Good morning, Harshal. Can you please tell us
15 as soon as possible the date you're going to
16 process the pending applications. We've seen no
17 processing as of yet."

18 September 20th:

19 "Hello, Harshal. Please advise us on the
20 inquiries at your earliest convenience."

21 September 27th:

22 "Good afternoon. Can you please send the OESP
23 support and update on your capabilities to
24 respond to the files sent to Ensqr."

25 October 5th:

26 "Hi, Harshal. Have you had any luck processing
27 files for OESP? We would like to extend an offer
28 to assist you in any way we can. Are you

1 currently using an automated system to process
2 files or is it something your team performs
3 manually?"

4 Finally, on October 18th we have Mr. Gunde responding,
5 asking for a password reset, and my understanding is that
6 the passwords time out after a certain period, so a lot of
7 these e-mails, because of the inactivity, result in --
8 involve requests for password resets.

9 So the point here is this: We have a September 13th
10 deadline, and we have, in light of that deadline, a month,
11 more than a month, actually, of inactivity or
12 unresponsiveness by Mr. Gunde between September 13th, when
13 he tells Jessie we've been able to successfully receive all
14 the files, and October 18th, where he makes the request for
15 a new password. And all that time ICF is reaching out
16 saying, What's happening? The applications aren't being
17 processed. Do you need help? We're here to help you, and
18 it's, you know, it's radio silence. And again, all this is
19 happening in the face of a Board order with a September
20 13th deadline.

21 On September 30th Ms. Marijan writes to Mr. Gunde and
22 requests a full update on the terms set out in the
23 assurance by October 4th. She writes an e-mail and then
24 she follows up by several voice-mails, and again she hears
25 nothing back from Mr. Gunde until October 18th. So there
26 is another period there of more than two weeks where it's
27 total unresponsiveness to Board requests for information,
28 because of course the Board is concerned that the

1 conditions are not being met or they haven't received
2 information in that regard.

3 On October 18th Mr. Gunde commits to providing Ms.
4 Marijan with an update by October 19th, but that doesn't
5 happen, and Ms. Marijan again has to follow up by way of
6 phone calls and voice-mails.

7 And Ms. Helt, who was then the senior legal counsel at
8 the Board, sends Mr. Gunde an e-mail on November 2. This
9 is at tab 2F of the same volume, and this is a, quite a
10 sternly-worded e-mail that refers to Mr. Gunde's non-
11 responsiveness and asks him to get in touch.

12 Finally, that shakes out a response from Mr. Gunde on
13 November 3rd. He commits to providing certain information
14 by the next day. That doesn't happen. He responds on
15 November 7th, and even then he doesn't provide the
16 documents requested.

17 Eventually some of those documents are provided or at
18 least one of those documents is provided on November 16th,
19 as we saw from the last exhibit. And it's really been
20 radio silence from Mr. Gunde since then on the issues set
21 out in the notice.

22 Apart from what's been filed as part of this
23 compliance proceeding we have got no information,
24 documents, updates, or records or reports from Mr. Gunde,
25 and in terms of communications with ICF, we have a little
26 blip in February at the end of February 2017, and then
27 basically nothing until the eve of this hearing, where
28 there is a request made for certain assistance on June 30th

1 after ICF first reaches out to Mr. Gunde.

2 So we have these long periods of activity. We have
3 Board requests for information and promises to deliver that
4 have not been complied with, and we have deadlines set by
5 the Board that have been blown by and, I would submit, from
6 the e-mail correspondence, simply not taken seriously in
7 the face of repeated offers to help and repeated check-ins
8 by ICF.

9 So that's the first category of the kind of track
10 record and the conduct here, and the extent of non
11 compliance with Board orders, and Board requests, and Board
12 deadlines. The second category is -- or the factor to
13 consider is the impact on consumers. And Mr. Gunde, I
14 think, fairly acknowledged this is a building that has a
15 lot of low-income residents living in it.

16 The evidence we have from the assurance is that 22
17 customers had applied for OESP as of that date, August 3rd,
18 2016. According to Ms. Colberg's affidavit, 28
19 applications were awaiting processing. Now those
20 applications don't all necessarily have to come from a
21 separate consumer. It could be that one consumer put in
22 more than one application; we're not in a position to know.
23 And we heard from Mr. Gunde today that I think 12 customers
24 had applied for OESP. Is that right?

25 MR. GUNDE: No, 23 had applied. But currently with
26 the new ownership, there are only 12 who are still existing
27 in the building.

28 MR. SAFAYENI: So 12 still existing in the building.

1 Fair enough.

2 In any event, whatever number we pick, whether it's
3 23, 28, or 12, none of these applications have been fully
4 processed and none of these people are receiving the
5 credits to which they may be eligible. And of course, this
6 has a serious and direct and impact on the most vulnerable
7 folks in the province. These people should have had their
8 applications processed when they were first submitted and
9 put into ICF into the request folder.

10 For some of these people, as we heard from Ms.
11 Colberg, this has been back since January 2016 when the
12 program kicked off. That's more than 18 months that these
13 folks have been deprived of credits, and it's Board Staff's
14 position it's simply unacceptable for a utility to be
15 either unable or unwilling to take the necessary steps to
16 rectify the situation despite Board orders, despite
17 repeated requests by Staff for information, and despite
18 repeated offers for assistance by ICF.

19 As I say, in terms of a sanction, there is no question
20 that revocation is an available sanction in this case.
21 Section 112.4(1) of the Board (sic) says that if a person
22 who holds a licence has contravened an enforceable
23 provision, the Board may make an order suspending or
24 revoking the licence. Section 3 defines an enforceable
25 provision as including an order of the Board and, as I took
26 you to earlier, section 112.7(2) provides that an assurance
27 of voluntary compliance has the same force and effect as an
28 order of the Board.

1 So between those three provisions, revocation is
2 available. Whether it's appropriate, in my submission,
3 depends on the seriousness of the breaches, the consumer
4 impact, and the possibility of further breaches in the
5 future.

6 I took you through the timeline just now and I think
7 the bottom line with respect to the severity of the
8 breaches is this isn't a case with a minor or technical
9 breach. This is an almost total breach of the assurance
10 and one that continued for nearly a year. We are here in
11 July and ground hasn't moved much from where we were in
12 August 2016, when the assurance was signed.

13 The pattern of conduct here suggests -- I think the
14 only reasonable conclusion you can draw from the lengthy
15 periods of non-responsiveness, even when key deadlines are
16 coming up or have been missed, from the repeated promises
17 to deliver information only not do so by those dates is
18 just that we have an entity that's not taking its
19 regulatory obligations seriously. And it's Board Staff's
20 position that the message has to be sent, not only to
21 Ensqr, but to other regulated entities that a Board order
22 has to be taken seriously, and if you ignore Board orders
23 or decide to comply with them at your own pace, that's not
24 going to cut it.

25 In other words, another way of putting this point is
26 when you consider the issue of revocation, I think you have
27 to have an eye to specific deterrence as it relates to
28 Ensqr and general deterrents as it relates to other

1 regulated entities, because both of these principles, both
2 of these aspects of deterrence serve a preventative and
3 protective public interest function. And that's part of
4 what this Board's mandate is all about, particularly when
5 it comes to consumers.

6 I have provided you with a case that I don't need to
7 go through in any detail. It's the Cardaway Resources case
8 from the Supreme Court of Canada, and I've included this
9 case just for a very narrow proposition.

10 If you turn to page 20, the second last page,
11 paragraphs 60 and 61, the Supreme Court here is simply
12 making clear that deterrence is a relevant factor to
13 consider when you have administrative tribunals with a
14 public interest mandate.

15 I'll just read it briefly, and that's the only point I
16 want to make from this case. Starting at paragraph 60:

17 "In my view, nothing inherent in the commission's
18 public interest jurisdiction," and now it's
19 talking about the Securities Commission in this
20 case, "as it was considered by this court in
21 asbestos, prevents the commission from
22 considering general deterrence in making an
23 order. To the contrary, it's reasonable to view
24 general deterrence as an important and perhaps
25 necessary consideration in making orders that are
26 both protective and preventative.

27 Justice Ryan recognized this in her dissent:

28 "The notion of general deterrence is neither

1 punitive nor remedial. A penalty that is meant
2 to generally deter is a penalty designed to
3 discourage or hinder like behaviour in others.
4 The Oxford English Dictionary defines
5 'preventative' as that anticipates in order to
6 ward against, precautionary, keeps from coming or
7 taking place, acts as a hindrance or obstacle. A
8 penalty that is meant to deter generally is a
9 penalty designed to keep an occurrence from
10 happening; it discourages similar wrongdoing in
11 others. In a word, a general deterrent is
12 preventative. It is therefore reasonable to
13 consider general deterrence as a factor, albeit
14 not the only one, in imposing a sanction under
15 162. The respected importance of general
16 deterrence as a factor will vary, according to
17 the breach of the act and the circumstances of
18 the person charged with breaching the act."

19 And in my submission, the same rationale and
20 reasoning applies to this Board when considering its
21 enforcement jurisdiction in a case like this. When it
22 comes to the severity of, and the consequences of Ensqr's
23 breach on customers, again I took you to the numbers. No
24 matter what number we pick, we're talking about vulnerable
25 people who have suffered real-life consequences of being
26 deprived of credits they might otherwise have been entitled
27 to.

28 In my submission, that directly engages this Board's

1 consumer protection mandate under section 1(1).1 of the
2 Energy Board Act. The very first thing you see is:

3 "The Board shall be guided by the following
4 objectives: to protect the interests of consumers
5 with respect to prices and the adequacy,
6 reliability, and quality of electricity service."

7 Of course, that's not the exclusive purpose or
8 objective or mandate of the Board, but it is an important
9 one and one that's directly engaged here. Protecting
10 consumers in the context of a case like this means ensuring
11 that utilities that can't play by the rules aren't
12 licensed, that consumers are only dealing with utilities
13 that are in a position to meet their legal obligations,
14 meet Board orders, and satisfy what's required of them
15 under the statutory scheme.

16 In my submission, those two considerations are enough
17 to justify revocation, but I want to talk about a third,
18 which is the risk for similar problems to arise again in
19 the future. And if you look at the situation here, in my
20 submission, there's no basis to take any comfort that this
21 is the end of the breaches, that none of this is going to
22 happen again.

23 I say this for several reasons. First of all -- and
24 I'm not going to go through it in any detail again, but we
25 talked about the past conduct, and that is a good
26 indicator, as the saying goes, perhaps the best indicator,
27 of future conduct. And the past conduct here is not just
28 an isolated technical instance of non-compliance, but it's

1 a track record of failing to meet deadlines, failing to
2 respond to requests for information, and I take no comfort
3 from that record that that's going to end today and it's
4 going to be totally different behaviour in the future.

5 Second, we're talking here about a company with
6 limited resources which, frankly, had lots of difficulty
7 complying even back when they had five employees. We've
8 heard today from Mr. Gunde that they are now down to two
9 employees and that Mr. Gunde himself is the sole person
10 kind of with carriage of the OESP mandate. That gives me
11 no comfort that we're going to have a more responsive or
12 more active hand on the wheel when technical or other
13 issues inevitably arise in the future.

14 Finally, this area of business, is providing this USMP
15 service, simply doesn't appear to be a priority for Mr.
16 Gunde or Ensqr. We heard the company's main line of
17 business is a completely different area of providing energy
18 audits or energy efficiency services for commercial
19 clients, and Mr. Gunde told us that that's basically what
20 takes up 80 percent of his time is dealing with that.

21 They don't have any other buildings. This seems to be
22 kind of an area that they're dabbling in, USMP activities.
23 You know, with that backdrop it's a little bit easier to
24 understand why perhaps they weren't responding or acting
25 with alacrity when these issues arose or when deadlines
26 came and passed, but just because it's not a priority for
27 Ensqr or for Mr. Gunde doesn't mean it's not a priority for
28 the consumers, of course, which would be counting on these

1 credits, and whose failure to receive them would have a
2 major impact.

3 It's important to recognize this wouldn't be the first
4 time this Board has revoked a licence for a failure to
5 comply with an enforceable provision. This Board has
6 revoked licences, for example, where entities have failed
7 to pay licensing fees. I won't take you there, but I'll
8 just note that two of those decisions are included at
9 tabs 3 and 4 of the volume I provided to you, my book of
10 authorities, but maybe the most relevant case for our
11 purposes is the Energex decision, which is at tab 1 of the
12 book of authorities. Energex was a small electricity
13 retailer and gas marketer, and the Board found that Energex
14 was in breach of various provisions of the act and the
15 ECPA, ordered it to pay \$10,000 by December 31st, 2012.
16 Energex requested two extensions to that deadline for
17 paying the \$10,000 AMP and the Board granted both
18 extensions, eventually extending the deadline to August
19 29th, 2013.

20 But then Energex missed that deadline as well, and the
21 Board revoked Energex's licence on the basis that it failed
22 to comply with the Board order.

23 Now, the case for revocation here, in my submission,
24 is even stronger than it was in Energex or the cases
25 involving the failure to pay a licence fee. In those cases
26 the issue was a failure to pay. Now, I don't want to
27 minimize that. That's an important obligation and a
28 serious breach, but the breach of the order here involves

1 something more serious and more fundamental, because it's
2 something that, if you can't properly implement,
3 administer, and report on the OESP system, consumers are
4 directly being impacted in a way that wasn't at stake in
5 either Energex or the failure to pay the licence fee
6 decisions.

7 What's more, in Energex at least we had the retailer
8 writing to the Board, making requests, recognizing they
9 weren't going to meet the deadline, and asking for
10 extensions. At a certain point they ran out of rope. But
11 we had a recognition that a Board order exists. We can't
12 just blow past this. We have to make a request. And of
13 course nothing like that happened here.

14 Finally, with respect to the explanation put forward
15 by my friend regarding confusion with the property owner,
16 and the old property owner ending the contract, the new
17 property owner taking over, in my submission, it doesn't
18 count for very much because, even accepting that
19 explanation at face value, it doesn't explain why Energex
20 failed to meet the August 12th deadline, it doesn't explain
21 why Energex failed to meet the September 13th deadline, and
22 it doesn't explain why Energex didn't do exactly what it
23 did yesterday afternoon, in terms of starting down the road
24 to having these applications fully processed, why it didn't
25 do that at any time in the preceding months.

26 That was a step it could have taken, but it didn't,
27 and in my submission, there is no good explanation for why
28 that didn't happen.

1 So for all those reasons, Staff's position is that
2 revocation is appropriate in this case. And subject to any
3 further questions you may have or issues that may be raised
4 in reply, those are my submissions.

5 MR. QUESNELLE: Thank you for that, Mr. Safayeni. One
6 thing that does come to mind in your submissions that
7 revocation is the -- I think you mentioned not only
8 appropriate but the only appropriate remedy in this case.
9 What's your understanding of the Board's latitude in this
10 case? The notice that went out gave notice to Ensqr that
11 revocation was being sought by the motion team.

12 Is the Board in a position to take view of that but
13 determine that another remedy would be adequate, or
14 appropriate, I should say, in the form of administrative
15 penalty, perhaps? Have you put your mind to that, and is
16 that, in your submission, something available to the Board,
17 or would you like to make further written submission on
18 that at another time? Are you prepared to speak to that
19 now?

20 MR. SAFAYENI: Well, if we look at the notice which is
21 at tab I of the book of authorities -- sorry, of the
22 Exhibit K1.1, at page 3 it says:

23 "Further, take notice that if a hearing is
24 requested the OEB is not bound by the above-noted
25 enforcement action, has discretion upon finding
26 one or more contraventions of an enforceable
27 provision to make any order it deems appropriate
28 under section 112.4 of the act."

1 Section 112.4 of the act is limited to revocations and
2 suspensions of licence. Administrative monetary penalties,
3 as you'll know, fall under section 112.5 of the act.

4 MR. QUESNELLE: Mm-hmm.

5 MR. SAFAYENI: So I think --

6 MR. QUESNELLE: Here's -- my concern is whether or not
7 notice adequately put Ensqr on notice that administrative
8 penalty was a potential outcome of this hearing. Do you
9 think it is, or...

10 MR. SAFAYENI: Well, no, I mean, I don't think that's
11 something that the Board -- that -- I don't think it is
12 something that is on the table, so to speak, based on the
13 notice, if I can put it that way. So I think I share your
14 view on that.

15 You know, in our view, administrative monetary
16 penalties might be something that's appropriate when you
17 don't have all three of those factors I've outlined in
18 terms of the severity of the breaches, the impact on
19 consumers, and the continuing concern in the future that
20 this is going to happen. When you have those three
21 present, our submission is that revocation is the
22 appropriate remedy here.

23 MR. QUESNELLE: Not only appropriate, but in this
24 case, given the notice, the only option on the table?

25 MR. SAFAYENI: Well, yes, it is the only option that
26 we're seeking. I think, technically under the act,
27 suspension would also be an option on the table because it
28 does fall under 112.4. You're not bound by the requirement

1 for revocation, but I think that's the universe of
2 sanctions.

3 MR. QUESNELLE: Understood. Thank you very much.

4 Mr. Gunde, you've heard the submissions and as we
5 mentioned before the break, we will provide you with the
6 opportunity to exercise an option of whether or not you
7 want to refer to the transcript -- the transcript will be
8 available later today, if not by tomorrow -- and provide
9 your submissions in writing at a later date, within a week
10 I would suggest, or respond now orally. And now that
11 you've heard the submission, make that choice.

12 MR. SIDLOFSKY: I think I'll respond to it orally.

13 MR. QUESNELLE: Thank you very much. Any time you're
14 ready to go.

15 **CLOSING SUBMISSIONS BY MR. GUNDE:**

16 MR. GUNDE: I have heard at length, and probably in
17 hindsight, I could have done things much differently.

18 There are a couple things I wanted to first address.
19 One is about the consumers. None of the consumers who have
20 ever applied for OESP have ever had a loss or not received
21 a credit, because quite a few of them haven't even paid.
22 So there are -- we haven't charged them or there is no --
23 they haven't faced a loss because of our non-compliance
24 with that. And as per the previous order, we are giving
25 them the credit. So I don't think monetarily they will
26 ever be affected.

27 That is one of the first thing I wanted to address
28 because for us, customers are the first priority and

1 especially in this place. There are a quite a few
2 vulnerable customers and we always worked with them. Quite
3 a few default and we always worked with them and asked the
4 landlord to take care of them.

5 MR. QUESNELLE: Mr. Gunde, just on that point -- and
6 this references something I'd asked earlier. I think your
7 testimony was that at one point, there were 86 customers
8 and now there are 72, and I asked what happened to the
9 customers who left.

10 From the submission you just made, am I to understand
11 they have left and they had not paid for electricity.

12 MR. GUNDE: Yes.

13 MR. QUESNELLE: And are they being sought after for
14 payment for the electricity?

15 MR. GUNDE: No.

16 MR. QUESNELLE: Okay.

17 MR. GUNDE: We gave them -- the issues is, especially
18 from our side, if you cannot enforce or give an accurate
19 bill because of some non-compliance, we didn't enforce
20 That. That was a penalty we took and the landlord even
21 understood that.

22 There were quite a few -- what I wanted to also
23 address is there are a quite a few other factors which
24 affected the way -- I saw the whole timelines, which my
25 friend here has highlighted. There are quite a few other
26 factors, like employees and the current -- the previous
27 landlord and the present landlord were the timelines where
28 I could not communicate in writing with the Board, because

1 of business issues.

2 And also there is a lot of -- what happens with the
3 whole standards and everything, sub-metering in the
4 utilities are kind of bunched together in terms of
5 compliance. But when it comes to sub-metering, we are not
6 able to enforce most of the payment instructions that a
7 utility could do. For example, in the past, even before
8 OESP was there, when we billed to the customers and the
9 customers didn't want to pay, and the landlords went ahead
10 and started implementing other measures. The rent control
11 Board is the other act which controls their behaviour and
12 they had issues.

13 So finally, it becomes that all of us have to work
14 together, so that the customers -- and especially the
15 vulnerable customers are not affected. So we have looked
16 at not ever having an issue with them.

17 In terms of the timelines, with the previous order, we
18 were trying to be compliant. Yes, there were delays and I
19 understand there were other factors. But what was
20 highlighted is by September 13 is what we should have done
21 is -- around the same time, the building owner also had
22 started communicating with us and we did not know whether
23 we were going to continue, whether we will have any of
24 these customers, whether that sub-metering work we will
25 have will continue at the building. And that's where I
26 think many of the timelines get affected.

27 Even though my friend here does not think that is an
28 issue for us, that was the driver for us not to be able to

1 communicate and comply with the old order.

2 In terms of the risk in future and what has happened
3 in the past, sub-metering we started off as being one of
4 the focus because in future we wanted to get into demand
5 management and other things, and with all the competing
6 rent control, sub-metering, and other laws, it did sort of
7 become -- if we did not grow as we expected it to grow, and
8 there were also other circumstances.

9 We are continuing to pursue this opportunity with
10 newer business plans and newer -- now that we understand
11 this much better because we just started, sub-metering had
12 just started and now we have a better idea what we can
13 enforce and what we cannot enforce. That's where we are
14 also getting the landlords involved in becoming part of the
15 risk, because that is where they have to control the
16 consumer that is present in their Building, and they are
17 bound with their own lease controls. And that is also in
18 effect, I think, for the future so that this is not
19 repeated.

20 In terms of whether, going forward, we can meet our
21 obligations, technically, because of the way that we have
22 limited resources, nowadays it's not the number of
23 employees but how we can structure our business that we can
24 be effective. So we have outsourced most of the customer
25 service and the technical side, because we couldn't meet
26 the deadlines in the past. In that way, people who are
27 experts on the technical side can manage the billing
28 system, and that way we can address the customer side.

1 In terms of going back to these existing customers,
2 we're not going to bill or enforce anything unless we are
3 compliant and we have the right to bill them, along with
4 the contract with the new owner. That's where -- we're not
5 going enforcing anything unless we are compliant with all
6 the requirements of the OESP act and the sub-metering act.

7 MR. QUESNELLE: What's your resistance to actually
8 bill and collect money in absence of a contract with the
9 landlord?

10 MR. GUNDE: The whole requirement, as I told
11 previously -- let's say -- I will give an example. I don't
12 want to quote the numbers, but let's say we were billing
13 them as 5 dollars as our customer service charge. Now the
14 new landlord wants us to bill at 20 dollars because they
15 don't want to pay for -- we have implemented, for example,
16 350 meters here, but with only 72 customers. We can't
17 recover. The previous landlord was okay to give us a part
18 of the unused meters as a compensation. The new landlord
19 doesn't want. They want us to recover by charging 20
20 dollars, for example. And then if you look at the bill and
21 the electricity charges, they're \$18. So at that point,
22 these vulnerable customers especially, they start resisting
23 and why am I paying.

24 MR. QUESNELLE: So the contract barrier, or the
25 barrier in your mind is disagreement on what the bill will
26 actually include.

27 MR. GUNDE: Correct. And also at the point when
28 they're leaving the apartments and there are outstanding

1 bills, how do we enforce it. Let's say somebody has 300
2 dollars and then they leave. Only the landlord has the
3 jurisdiction to hold their deposit or to pay us, which in
4 the past became a bigger issue because the landlord expects
5 us to pay and we're not recovering it.

6 MR. QUESNELLE: Thank you.

7 MR. GUNDE: So going forward from our side, I
8 understand, yes, there are problems which we had faced and
9 for us, we want to go ahead and finish the work get to a
10 steady state where we are compliant. On the collection
11 side, we have never ever gone ahead and enforced anything
12 with the customer to adversely affect them, and that we've
13 always been careful about.

14 MR. QUESNELLE: Can you provide us with any sense of
15 the quantum of the amounts that these customers pay for
16 bills once you do have in your mind the capacity, or the
17 comfort level to actually collect? Being in compliance and
18 having a contract, would those two matters, if they're
19 brought into play, what are we looking at for...

20 MR. GUNDE: So an example?

21 MR. QUESNELLE: Just examples, obviously.

22 MR. GUNDE: For example, a customer who is on OESP,
23 will, on average, have a bill of about 30 dollars after the
24 OESP credit, the expected OESP credit per month. And that
25 is -- if you look at it, it's basically a -- we're looking
26 at \$20 off our service charges, because nearly the whole
27 electricity bill -- and some of them will start having
28 positive credit, which again will go down to zero because

1 of the way the economics would work out.

2 MR. QUESNELLE: And other customers? Because we're
3 only talking about --

4 MR. GUNDE: So they have on an average \$50 to \$70.

5 MR. QUESNELLE: Per month?

6 MR. GUNDE: Per month.

7 MR. QUESNELLE: Thank you.

8 MR. GUNDE: In winters in the past they had issues
9 because the heaters were not working, so they used to use
10 the electric stuff, so I've seen bills as high as \$200, at
11 which point they never paid, and then the -- and that's
12 where the partnership with the landlord is required for the
13 sub-metering providers especially, is because at that point
14 the landlord has an obligation to provide heat, and we
15 couldn't enforce even though we are allowed, we couldn't
16 enforce electricity charges, and that becomes a whole
17 different issue.

18 MR. QUESNELLE: I see. Thank you.

19 MR. GUNDE: So I think from our -- from the company's
20 side I would request if there was some way of us for
21 continuing with the licence if there is a certain way that
22 we could become compliant and move forward. That is what I
23 would request the Board to consider.

24 MR. QUESNELLE: Thank you, Mr. Gunde.

25 Mr. Safayeni, do you need some time, or...

26 **REPLY SUBMISSIONS BY MR. SAFAYENI:**

27 MR. SAFAYENI: No, I think just very briefly, Mr.
28 Chair. From our perspective, the time for taking steps to

1 bring Ensqr into compliance has come and gone. That was
2 the August 3rd order. And again, the concern here is --
3 the paramount concern here is we can't have a situation
4 where the first baby steps towards compliance are achieved
5 on the eve of an enforcement hearing. That's not the
6 message to be sent to regulated entities. If it has to be
7 that if the Board makes an order that needs to be taken
8 seriously.

9 MR. QUESNELLE: Mr. Safayeni, something has just come
10 to mind that I would like to put to Mr. Gunde. And I will
11 offer you the opportunity to reply depending on his
12 response.

13 Mr. Gunde, I asked earlier what happens both from a
14 financial and physical basis when a contract is terminated
15 from one of the landlords and the other one picks it up,
16 and you had mentioned that they either had the opportunity
17 to purchase the assets or there is an arrangement made that
18 you enter into an agreement with the new.

19 What would happen with your assets if your licence was
20 revoked?

21 MR. GUNDE: Basically, you have to find somebody else
22 to take over the meters, some other sub-metering provider.

23 MR. QUESNELLE: What are the nature of your physical
24 assets?

25 MR. GUNDE: It's meters. We have installed 350 in
26 this particular building and all the technology to access
27 the readings. So that's roughly about \$150,000 worth of
28 inventory.

1 MR. QUESNELLE: Is that hardwired in or is that an RF?

2 MR. GUNDE: Hardwired in through concrete. It took us
3 a year to implement it.

4 MR. QUESNELLE: So it's not a mobile?

5 MR. GUNDE: No. And that's where -- like, [REDACTED], who
6 took over the property, wanted to work with the old
7 provider, but when they started looking at the way --
8 because we didn't have any idea, and the way the
9 interfacing was it was too much of an investment on their
10 side. They said, Yeah, you guys just continue, because
11 that's the best course of action.

12 And looking at the vulnerable and the effect of, you
13 know, working with these kinds of people, [REDACTED] had no
14 idea, because they thought right now so they're facing
15 registrants for the \$20, and that's why we have to work
16 with them and get the -- this particular building has a lot
17 of those kind of customers, and for us we understand that,
18 and that's why the LEAP also became a confusion, because
19 they used to say, just give the bill to the social worker,
20 and then they used to take it and then pay us and then it
21 was like, okay, what party -- and after it was confusion on
22 our part, which was rectified, and we're trying to comply
23 with the OESP.

24 MR. QUESNELLE: Thank you for that.

25 Mr. Safayeni, I don't know if there is anything in
26 there you want to reply to. I'm just trying to understand
27 the practical ramifications of things here.

28 MR. SAFAYENI: No, I don't think so, Mr. Chair. Thank

1 you.

2 MR. QUESNELLE: Okay. Thank you very much.

3 Okay. So you are complete with your responses?

4 MR. SAFAYENI: Yes.

5 MR. QUESNELLE: Okay. Well, thank you very much. And
6 it's been a full morning. I'll be reserving on this, and
7 we will issue a decision. We understand the importance of
8 the matter, and we'll be issuing a decision ASAP.

9 MR. SAFAYENI: Thank you, Mr. Chair.

10 MR. QUESNELLE: With that we're adjourned. Thank you
11 very much.

12 --- Whereupon the hearing adjourned at 12:22 p.m.

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