Exhibit 10

OEB’s CCTA Decision, the CCTA Settlement Agreement and the transcripts from the hearing

Ontario Energy Board

Commission de l'Énergie de l'Ontario

RP-2003-0249

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

AND IN THE MATTER OF an Application pursuant to section 74 of the *Ontario Energy Board Act, 1998* by the Canadian Cable Television Association for an Order or Orders to amend the licenses of electricity distributors

BEFORE: Gordon E. Kaiser
Vice Chair and Presiding Member

Paul Sommerville
Member

Cynthia Chaplin
Member

DECISION AND ORDER

The Applicant, Canadian Cable Television Association ("CCTA") seeks access to the power poles of the regulated electricity distribution utilities in Ontario for the purpose of supporting cable television transmission lines. Specifically, the CCTA is seeking an Order under section 74(1) of the *Ontario Energy Board Act* which would amend the licences of these utilities in a fashion that would specify the uniform terms of access including a province-wide uniform rate or pole charge for such access.

In the past, the CCTA members have rented space on the utilities' poles under private contract. That contract came to an end in 1996. Since then, the parties have been unable to reach further agreement with respect to rates.

Background

In early 1997, the CCTA applied to the Canadian Radio and Telecommunications Commission ("CRTC") to set a charge for access by cable companies to the poles of the Ontario electricity distributors. After a lengthy proceeding, the CRTC set an annual pole charge of $15.89.[1]

The Ontario Municipal Electric Association ("MEA") appealed that decision to the Federal Court of Appeal which held that the CRTC did not have statutory authority under the Telecommunications Act to regulate access by cable operators and telecommunication carriers to power poles.[2]

On further appeal by the CCTA the Supreme Court of Canada upheld the Federal Court of Appeal decision.[3] Given the Court's decision that the CRTC lacked jurisdiction, the CCTA filed an application with this Board on December 16, 2003 on behalf of the twenty-three cable companies that operate in Ontario. None of the parties questioned the jurisdiction of this Board.

The issues before this Board in this proceeding are as follows :

1. Is it necessary that this Board set access charges?
2. Which parties should have access?
3. What is the appropriate methodology?
4. How many attachers should be assumed in calculating the rate?
5. Should there be a province-wide rate?
6. What costs should be used in calculating the rate?
7. Should new licence conditions impact existing contracts?

The Need to Regulate Access Charges

Part VII Application - Access to supporting structures of municipal power utilities - CCTA v. MEA et al - Final Decision, Telecom Decision CRTC 99-13, 28 September 1999. [hereinafter "Telecom Decision CRTC 99-13"]

Barrie Public Utilities v. Canadian Cable Television Assn., [2001] 4 F.C. 237.

Barrie Public Utilities v. Canadian Cable Television Assn., 2003 SCC 28.

The CCTA Application is opposed by the Electricity Distribution Association ("EDA") and the Canadian Electricity Association ("CEA"). The EDA represents virtually all licensed electricity distributors in this province (sometimes referred to as LDCs) while the CEA is a national association representing electricity distributors, generators and transmitters. The position of these two parties is supported by Hydro One Networks Inc., Hydro One Brampton Networks Inc., and Hydro One Remote Communities Inc.

The position of the EDA *et al* is that regulatory intervention by this Board is not necessary. The argument largely is that the Applicant has not demonstrated that there has been a systematic abuse of monopoly power and absent that showing, the Board should allow the parties to continue to negotiate.

There has been some evidence on both sides with respect to abuse. In the end the CCTA says that the electricity distributors do have monopoly power and the fact that the parties have been unable to come to an agreement for over a decade demonstrates the exercise of that monopoly power whether this results in abuse or not.

The Board agrees. A showing of abuse is not necessary to justify the intervention of this Board in this matter. The fact is the parties have been unable to reach an agreement in over a decade. This degree of uncertainty is not in the public interest.

The Board agrees that power poles are essential facilities. It is a well established principle of regulatory law that where a party controls essential facilities, it is important that non-discriminatory access be granted to other parties. Not only must rates be just and reasonable, there must be no preference in favour of the holder of the essential facilities. Duplication of poles is neither viable nor in the public interest.

The Board concludes that it should set access charges.

The EDA *et al* further submits that if the Board is going to set rates it should set a range of rates based on its proposed methodology as opposed to a specific rate. The CCTA opposes this. The CCTA argument is that a range of rates would simply lead to continued delay, that monopoly power would continue to be exerted and in fact, the upper range would become the rate. In another words, the bargaining power of the cable companies would be as deficient with a range of rates as it is at present. The Board accepts this view. There is no rationale for a range of rates in the current circumstances.

Who should have access?

On this issue, the parties are in agreement. In the Settlement Agreement of October 19, 2004, all parties agreed that if the Board does set access conditions, these conditions should apply to access to the communications space on the LDC poles by all Canadian Carriers as defined in the Telecommunications Act and cable companies. The only exception is that these conditions would not apply to the current joint use agreements between telephone companies and electricity companies that grant reciprocal access to each others poles.

This Board has accepted the settlement agreement in this regard. In addition, the Board has heard submissions to the effect that the LDCs agree that their own telecommunication affiliates would access poles on the same conditions as other users of the communications space. The LDCs also confirmed that all users of the communications space should pay the same charge.[5]

This is an important clarification. This market is changing rapidly and industries are converging. Cable companies are now providing the telecommunication services just as the electricity distributors enter this industry. The fact that the two groups that have been warring over the past decade are fast becoming competitors is an additional reason for the Board to intervene and establish clear guidelines. From this Board's perspective, it is equally important that costs be properly allocated and that the electricity distributor (and ultimately, the electricity ratepayer) receives its fair share of revenue.

What is the appropriate methodology?

There are two elements to the proposed rate. The first is the incremental or direct costs incurred by electricity distributors that results directly from the presence of the cable equipment. Second, there are common or indirect costs which are caused by both parties. The parties agree that the direct or incremental costs should be borne by the cable companies.

The dispute relates to what share of the common cost each parties should pay. The cable companies say the portion of the fixed or common cost they should bear should be based on the cable companies "proportionate use" of the usable space on the pole. Electricity distributors claim that the portion of the common cost each of the parties bear should be equal. In other words, the common cost should be divided equally among attachers on a "per capita" basis.

Tr. Vol. 2 at paras. 800 and 804.

Both parties called experts. The cable companies called Donald A. Ford while the electricity distributors called Dr. Bridger Mitchell. Reply evidence for the CCTA was presented by Patricia Kravtin and Paul Glist. All witnesses were qualified as experts.

The CCTA Application seeks a pole attachment rate of $15.65, a similar amount to that decided by the CRTC. The rates proposed by the EDA are substantially higher.

The principal argument advanced by the cable companies is that proportionate use is the methodology adopted by the CRTC and it has also been followed elsewhere in Canada and the United States. They point out that there have been numerous reviews of this rate methodology and the methodology has never been set aside.[6]

The response of the electricity distributors is that these rates are unduly low and are driven by considerations of telecommunication policy. In particular, they were designed to foster competition in that sector. The witnesses, however, were unable to point to any particular articulation of that policy goal as the justification for the rate levels at least in the Canadian context.

In Canada, the two decisions that follow the CRTC decision have in fact been divided on this issue. The Alberta Energy Utility Board ("AEUB") established a pole attachment rate of $18.34 in 2000 using the per capita approach.[7] The Nova Scotia Utility and Review Board ("NSURB") set a rate of $14.15 in 2002 following the CRTC approach.[8] The Nova Scotia Board did point out however, they had not conducted any cost allocation studies on their own.

An additional argument to support the lower rate advanced by the cable companies is that they are only tenants while the electricity distributors own the poles. They argue that pole ownership confers a benefit.

The electricity distributors deny this, claiming that ownership has costs; they have

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FCC v Florida Power Corp. 480 US 245, (1987); In the Matter of Alabama Cable Telecom Association v Alabama Power Corp.; 16 FCC 12, 12, 209 (2001)

TransAlta Utilities Corporation, Decision 2000-86 (Alberta Energy and Utilities Board), December 27, 2000 online: <http://www.eub.gov.ab.ca/bbs/documents/decisions/2000/2000-86.pdf>.

In the Matter of the Public Utilities Act and In the Matter of an Application by Nova Scotia Power Incorporated for Approval of an Increase in its Pole Attachment Charge, Decision 2002 (Nova Scotia Utility and Review Board) NSUARB-1, January 24, 2004.

to install poles whether they have an attacher or not and may face stranded assets. In the end, the Board is not persuaded that the ownership of the poles should effect the level of rates. The Board agrees with the electricity distributors that the impact of ownership is neutral.

The CEA argues that electricity distributors should be allowed to raise the rates charged to the cable companies because cable companies are now generating "massive new sources of revenue" from the use of electricity distribution plant. In particular, they point out that revenues from high speed internet service have increased from $0 in 1995 to over $900 million annually by 2003. The CEA requested that the Board infer that a large portion of these revenues are from Ontario cable operations. The Board notes that there is very little evidence on this issue. Moreover, the Board believes that the methodology used to determine rates should be based on cost recovery, not some form of revenue sharing.

Another rationale advanced by the cable companies is that it makes no sense to have different methodologies for setting rates on power poles compared to telephone poles. The argument is that since the CRTC methodology is used to price access to telephone poles, the same methodology should be followed in pricing access to power poles. The Board is not convinced. This Board may have a different policy rationale than the CRTC particularly in terms of the electricity ratepayer and the serving utility. In any event, it is worth noting that the rental charge paid by the cable companies for access to telephone poles is $9.60 per pole. This is certainly not the rate being advanced by the cable companies in this proceeding.

The most persuasive argument for equal sharing of the common cost is the practice that appears to take place when parties are in position of equal bargaining power. The LDCs point to the reciprocal agreements between the telephone companies and the
power companies that have existed for a number of years. Under those agreements, each of the regulated utilities has access to the other's poles. They essentially split the common cost equally.

The cable companies question this proposition. They argue that these are regulated entities that have a bias to invest more than optional amounts of capital based on the Averch Johnson principle. [9] The Board notes however, that both sides face the same incentive in terms of investing capital in rate base assets. It can reasonably be assumed that the telephone companies and the power companies are in an equal bargaining position and the resulting solution is a meaningful guideline.

The CCTA responds that its members are not in an equal bargaining position. In

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Harvey Averch and Leland L. Johnson, "Behaviour of the Firm under Regulatory Constraint," *Amer. Econ. Rev.* (December 1962) LII: 1052-1069.

the Board's view, that is not relevant. The free and open negotiation between the telephone and power companies is offered as a proxy for a competitive market solution. No party holds an advantage over the other or is in a position to exercise monopoly power.

For many years, electricity and telephone companies in at least four provinces have openly negotiated reciprocal access agreements to telephone and power poles. In all cases, these agreements appear to reflect equal allocation of common costs. This suggests that the per capita or equal sharing methodology is the appropriate one. Moreover, as more and more parties attach to these poles, the notion that there is a discrete portion of space to be allocated to each becomes more problematic.

The Board recognizes that a case can be made for both the proportionate use and the equal sharing methodology. On balance, however, the Board prefers the equal sharing theory for the reasons stated.

How many attachers should be assumed?

When the CCTA filed its Application, it assumed two attachers. This position was amended in Final Argument when 2.5 attachers was proposed. The Reply Argument of the CCTA appears to revert back to two attachers with reference to the CRTC rate of $15.65.

Two attachers were assumed in the CRTC decision. The industry however, has changed dramatically over the last five years. There is evidence that in one municipality there are as many as seven different parties seeking attachment. There is also evidence that poles are used by municipalities for the purpose of street lighting and traffic lights.

In addition, an increasing number of telecommunication providers are entering the market to compete with incumbent telephone company providing voice and data services. A number intervened in this proceeding and by virtue of the settlement agreement will have access to the poles in question. Finally, in a number of major markets the Ontario electricity distributors have established their own affiliates to offer telecommunication services. The LDCs have agreed that these affiliates should pay the same rates as the other parties attaching to the power poles. There is also evidence that Hydro One which accounts for a third of the poles in the province has more than two attachers.

The Board considers 2.5 attachers to be reasonable. Things have changed since the days of the CRTC decision. If anything, there will be more than 2.5 attachers in the future.

Should there be a province-wide rate?

The cable companies argued for a standard province-wide rate. There is precedent for this in terms of the CRTC decision as well as the Nova Scotia and Manitoba decisions. A province-wide rate has the advantage that it is simple to administer. This is certainly one of the goals the Board hopes to achieve in this decision. Moreover, the cost data at the individual LDC level is incomplete. Calculating these costs for ninety different utilities will be a challenge for all concerned.

This is not to say there should not be relief available for electricity distributors who feel the province-wide rate is not appropriate to their circumstances. Any LDC that believes that the province-wide rate is not appropriate can bring an application to have the rates modified based on its own costing. Absent any application, the province-wide rate will apply as a condition of licence, as of the date of the Order.

What costs should be used to calculate the rate?

The annual pole rental charge of $15.65 proposed by the CCTA is a function of both the direct and the indirect cost as set out in Appendix 1. The direct costs consist of the administration cost and the loss of productivity. The total direct cost estimate of $2.61 is based on the CRTC decision.

The EDA claims that there is no reason why the Board should use a $1.92 estimate of loss of productivity as advanced by the CCTA. The EDA points to different data from five different LDCs which range from $0.67 per pole in the case of Hydro One Networks to $5 per pole in the case of Guelph Hydro. References are also made to the evidence of Manitoba Hydro filed by the CEA which calculated a loss of productivity of $6.39 per joint use pole.

There is no question that there is a wide variation in these costs and estimates. The EDA recommends that if this Board determines that it should use the CCTA model to arrive at a uniform annual pole charge, the Board should use the highest Ontario data available to set that uniform rate. That rate would be $32.81 using the Toronto Hydro data and the productivity loss estimate for Guelph Hydro. The Board disagrees and concludes that province-wide representative cost data are more meaningful in the circumstances. For the purposes of calculating the rate in this proceeding, the Board has adopted the direct costs set out in the CCTA application and reproduced in Appendix 1.

Next there are the indirect costs which consist of the net embedded cost per pole plus depreciation, maintenance expense and carrying costs. Again a wide range of costs were proposed by the EDA depending on the particular utility chosen. The Board has concluded that the depreciation, maintenance and carrying costs proposed by the CCTA are representative as set out in Appendix 1.

The CCTA's proposed rate is based on an average net embedded pole cost of $478. This embedded cost is derived from material filed by Milton Hydro in the proceeding leading to the Telecom Decision of the CRTC 99-13 and is supported by the evidence of Hamilton Hydro in this proceeding that the embedded pole cost is $477.47.

EDA argues that local costs vary significantly and if the Board considers it appropriate to set a uniform rate, the rate should reflect the cost of the utilities having the highest embedded pole cost. The EDA then submits that the parties should be free to apply to the Board for a lower rate where they can demonstrate lower costs.

While the Board recognizes local costs vary, there are advantages to having a province-wide rate. That rate should to a maximum extent possible, be based upon representative cost. The Board accepts the CCTA's estimated average net embedded pole cost of $478.

The rate proposed by the CCTA assumed a pre-tax weighted average cost of capital of 9.5%. In response to an undertaking, the CCTA provided a revised weighted average cost of capital based upon a debt equity ratio of 50/50, an interest rate of 7.25% and a return on equity of 9.88% as provided for in the Board's current Rate Handbook. This cost of capital applies to distributors with a rate base of less than $100 million. Given that a large majority of distributors in the province have less than this amount, the Board believes that this new weighted average of capital is an appropriate one to use in calculating a province-wide rate.

Calculation of the rate

To calculate the rate, it is necessary to define the number of attachers as well as the embedded pole costs discussed above. It is also important to define the spacing on a typical pole.

The CCTA proposal assumes a typical pole height of 40 feet with two feet of communications space, 3.25 feet of separation space and 11.50 feet of power space. Mr. Wiebe, on behalf of CEA proposed slightly different space allocations. The CCTA argues that the space allocations adopted by Mr. Ford are virtually identical to those put forward by the Municipal Electric Association in the CRTC proceeding. In addition, the EDA put forward a model agreement developed co-

operatively by a number of LDCs (the Mearie Group) where the assumptions regarding space allocation for a typical 40 foot pole were identical to those used by Mr. Ford. The Board finds that the CCTA estimates are acceptable.

As stated, the Board believes that a single province-wide rate is in the public interest. As indicated, the Board believes its more realistic to use 2.5 as the number of attachers. The Board agrees with the EDA and CEA that the common costs should be shared equally among all attachers. On these principles and the cost data described above, the annual pole charge is $22.35 per attacher as set out in Appendix 2.

Should there be a standard form of agreement?

Under the Settlement Agreement, the parties agree to negotiate the terms and conditions once the Board has made its determination as to the rate. The parties agree to report back to the Board in four months as to the progress of these negotiations. The Board accepts this approach.

Impact on existing contracts

In the Settlement Agreement all parties with one exception, agreed that any new rate set by the Board should not apply to existing contracts. The rate would only apply when the current term of existing contracts expired. Where no contract exists, the licence conditions would apply immediately.

The acceptance of this position appears to be driven by the fact that most existing contracts provide for retroactive rate adjustment in the event this Board determines a rate.

The CCTA states that it would not object to a Board ruling that existing contracts without a retroactivity clause are immediately subject to the Board's decision regarding new licence conditions. They claim however, that few contracts do not have retroactivity provisions.

MTS objects to the Settlement Agreement and submits that any pole access rates set by the Board should be applied to all existing contracts not just those with retroactivity clauses. The Board will provide that the new rates and conditions resulting from this decision will apply immediately to those agreements without a retroactivity clause. Those are apparently few in number. This should provide immediate relief to those who are unable to benefit from a retroactivity provision.

THE BOARD ORDERS THAT:

The licence conditions of the electricity distributors licenced by this Board shall as of the date of this Order be amended to provide that all Canadian carriers as defined by the Telecommunications Act and all cable companies that operate in the Province of Ontario shall have access to the power poles of the electricity distributors at the rate of $22.35 per pole per year.

Dated at Toronto, March 7, 2005.

Original signed by

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Gordon E. Kaiser
Vice Chair and Presiding Member

Appendix 1: CCTA Recommended Charge (2 Attachers)

	Price Component - Per Pole	***$***	***Explanation***
	DIRECT COST		
A	Administration Costs	$0.69	CRTC estimate 1999 $0.62, plus inflation
B	Loss in Productivity	$1.92	MEA estimate 1991 = $3.08, plus inflation, and divided between two pole attachers
C	Total Direct Costs	$2.61	A + B
	INDIRECT COSTS		
D	Net Embedded Cost per pole	$478.00	Milton Hydro 1995 = $478
E	Depreciation Expense	$31.11	Milton Hydro 1995 = $31.11
F	Pole Maintenance Expense	$7.61	Milton Hydro 1995 = $6.47, plus inflation
G	Capital Carrying Cost	$45.41	Pre-tax weighted average cost of capital 9.5% applied to net embedded cost per pole (D)
H	Total Indirect Costs per Pole	$84.13	E+F+G
I	Allocation Factor	15.5%	CRTC allocation
J	Indirect Costs Allocated	$13.04	H x I
K	Annual Pole Rental Charge	$15.65	C + J

Appendix 2: 2.5 Attachers - Shared Costs Evenly Spread Amongst All Users

	Price Component - Per Pole	***$***	***Explanation***
	DIRECT COST		
A	Administration Costs	$0.69	CRTC estimate 1999 $0.62, plus inflation
B	Loss in Productivity	$1.23	MEA estimate 1991 = $3.08, plus inflation, and divided between 2.5 pole attachers
C	Total Direct Costs	$1.92	A + B
	INDIRECT COST		
D	Net Embedded Cost per pole	$478.00	Milton Hydro 1995 = $478
E	Depreciation Expense	$31.11	Milton Hydro 1995 = $31.11
F	Pole Maintenance Expense	$7.61	Milton Hydro 1995 = $6.47, plus inflation
G	Capital Carrying Cost	$54.59	Pre-tax weighted average cost of capital 11.42% applied to net embedded cost per pole (D)
H	Total Indirect Costs per Pole	$93.31	E+F+G
I	Allocation Factor	21.9%	Allocation based on 2.5 attachers
J	Indirect Costs Allocated	$20.43	H x I
K	Annual Pole Rental Charge	$22.35	C + J

Canadian Cable Television Association Proceeding

SETTLEMENT AGREEMENT
October 19, 2004

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DRAFT ADR AGREEMENT (October 14, 2004)

This Alternative Dispute Resolution Agreement ("Agreement") is for the consideration of the Ontario Energy Board (“the Board”) under Docket No. RP-2003-0249. Attached as Appendix A to the Agreement is the Board's issues list which was issued through Procedural Order number 3 dated July 7, 2004. The Agreement identifies the issues on the Board's list for which agreement has been reached. The Agreement is supported by the evidence filed in RP-2003-0249.

Issues fall into three categories:

(a) issues on which there is no agreement;
(b) issues on which there is complete agreement; and
(c) issues on which parties take specific positions as shown

It is acknowledged and agreed that none of the completely settled provisions of this Agreement are severable. If the Board does not, prior to the commencement of the hearing of the evidence in RP-2003-0249, accept the completely settled provisions of the Agreement in its entirety, there is no Agreement (unless the parties agree that any portion of the Agreement the Board does accept may continue as a valid Agreement).

It is further acknowledged and agreed that parties will not withdraw from this Agreement under any circumstances except as provided under Rule 32.05 of the Ontario Energy Board's Rules of Practice and Procedure.

It is also acknowledged and agreed that this Agreement is without prejudice to parties reexamining these issues in a future proceeding.

The parties agree that all positions, information, documents (including any subsequent revisions), negotiations and discussion of any kind whatsoever which took place or were exchanged during the Settlement Conference are strictly confidential and without prejudice, and inadmissible unless relevant to the resolution of any ambiguity that subsequently arises with respect to the interpretation of any provision of this Agreement.

The role adopted by Board Staff in Settlement Conferences is set out on page 5 of the Board's Settlement Conference Guidelines. As noted in that document, "Board Staff who participate in the settlement conference are bound by the same confidentiality standards that apply to parties to the proceeding." Board Staff is not a party to this Agreement.

By Procedural Order No. 4 dated October 1, 2004, the Board scheduled a Settlement Conference to commence October 13, 2004. The Settlement Conference was duly convened, in accordance with Procedural Order No. 4, with Ms. Gail Morrison as facilitator. The Settlement Conference proceeded until October 14, 2004.

The following parties participated in the Settlement Conference:

The Canadian Cable Television Association (“CCTA”)
The Canadian Electrical Association (“CEA”)
The Electricity Distribution Association (“EDA”)
MTS Allstream Inc.
Hydro One Networks Inc. (“Hydro One”)
Energy Probe
360 Networks / London Connect
Power Workers Union (“PWU”)
Quebecor Media Inc.

Preamble:

The parties agree that this settlement agreement was entered into under the direction of the facilitator to assume for purposes of engaging in this settlement process and assisting the OEB that Issue No. 1 is answered in the affirmative. The positions and/or agreements of the CEA, EDA, and Hydro One in respect of Issues Nos. 2 through to 5 are <u>not</u> to be construed as their acknowledgement or agreement that regulation of access to LDCs' poles in any form should exist.

The parties' positions on each of the issues are as follows:

1. Should the Board set licence conditions for distributors with respect to joint pole use providing for conditions of access, including the charge for such access?

<u>Position of the CCTA, MTS Allstream, Quebecor Media, and Energy Probe, 360 Networks/ London Connect:</u>

Yes

<u>Position of the EDA, CEA, PWU and Hydro One:</u>

No

<u>Position of the Power Workers Union</u>

The PWU agrees with the EDA, CEA and Hydro One that the Board should not regulate the charge for access, but believes that the Board should set certain core conditions of access. For example, the PWU's position is that the Board should impose conditions that access should only be permitted to the extent that it does not have an adverse impact on the safety, system reliability, or other operational requirements of the LDC's distribution system.

However, the PWU is content that the issue of what conditions should apply be deferred to form part of issue four, at a subsequent stage of this hearing.

2. If the Board does set conditions of access, to what types of cable or telecommunications service providers should these conditions apply to?

<u>All parties agree as follows:</u>

If the Board does set conditions of access, these conditions should apply to access to the communications space on an LDC's poles by Canadian Carriers as defined in the *Telecommunications Act* and cable companies; provided, however, that these conditions shall not apply to joint-use arrangements between incumbent local exchange carriers and hydro distributors that grant reciprocal access to each other's poles.

3. If the Board does set conditions of access, what is the appropriate charge for joint pole use?

a. What principles, elements and methodology should be considered in the calculation of the charge?
b. How should the charge be applied?
c. Should it be a uniform charge for the entire province?

Issue 3(a)

The parties agree that:

(a) With respect to the issue of what principles, elements and methodology should be considered in the calculation of the charge, the principles of economic efficiency, fairness, and competitive neutrality should be considered, and the pole charge should reflect the fact that poles are monopoly assets;

(b) Assuming that one time costs are recovered through one time charges, recurring charges should be not less than incremental costs and not more than stand-alone costs; and

(c) Recurring charges should (1) provide for full recovery of incremental costs and (2) contribute towards embedded costs.

The parties disagree upon the method to determine the contribution toward embedded costs.

Position of the CCTA, MTS Allstream, 360 Networks/London Connect and Quebecor Media:

The contribution should be determined as a usage-based allocation of fixed costs measured on an embedded basis (as recorded in the books of the utility). The usage-based allocation should reflect the actual usage of the communications space on the pole (the 2 feet immediately above the clearance space) plus a proportional share of the neutral separation space (the 3.25 feet between the communications space and the power space).

Position of the EDA, CEA, PWU and Hydro One:

The EDA, CEA and Hydro One believe that local negotiations should determine the proper contribution.

If local negotiations fail, a procedure, to be put in place by the Board, should be available so that the parties can have the matter determined. In the context of that process (whether it be an application to the Board or submission to some

form of ADR process), the LDC would be required to justify the rate it seeks to charge on one or more of the following bases, among others:

(a) Take as a departure point a hypothetical joint use pole where each user has the same requirements. The costs of these requirements would be shared equally, and the additional costs of each user's incremental requirements would be borne by each user individually.
(b) Allocate shares of total cost based on the relative costs that would be borne by each user on a stand-alone basis.
(c) Divide the savings realized from a joint-use pole, relative to stand-alone support structures, on an equal basis.
(d) A relevant consideration may be relative revenues.

Other allocation methodologies might be appropriate, excluding the CCTA's recommended usable pole space methodology, but in any case the onus is on the LDC to justify its chosen methodology.

Position of Energy Probe

With respect to the recovery of embedded costs, Energy Probe believes that it is not practicable to determine costs on a utility by utility basis in advance of a cost rebasing exercise, which is not anticipated in advance of 2008. Energy Probe reserves its position with regard to which methodology best addresses the appropriate cost recovery principles.

Issue 3(b)

With regard to the question of how the charge should be applied, the parties have not reached agreement but have summarized their positions as follows:

Position of the CCTA, MTS Allstream and 360 Networks/London Connect and Quebecor Media:

Because costs are most readily determined on a per-pole basis, the charge should be applied on a per-pole, per-user basis and not on a per-attachment basis.

Applying the charge on a per-attachment basis would result in over-recovery of incremental costs and an over-contribution toward fixed costs.

Each user (i.e. single corporate entity entering into a joint-use agreement) should only be charged one charge per-pole, regardless of the number of attachments on the pole and the number of services offered by the user to its customers.

"**Attachment**" for these purposes should be defined as agreed in s.1.5 of Revision No. 5 of the MEARIE/CCTA draft model agreement, a copy of which is attached as Appendix B.

Position of the EDA, CEA, PWU and Hydro One

The way the charge should be applied would be consistent with the methodology chosen by the negotiating parties to underlie their agreement.

Where the parties are unable to agree, application to the Board/ADR process could be made and the LDC would be required to justify the method of applying the charge as flowing from the methodology agreed upon by the parties, or determined by the Board/ADR process.

Position of Energy Probe

These parties reserve their position.

Issue 3 (c)

With regard to the question of a uniform charge for the entire province:

Position of the CCTA, MTS Allstream, Quebecor Media and 360 Networks / London Connect:

Yes, there should be a uniform rate for all LDCs based on representative costs of LDCs, using CCTA's proposed methodology referred to in 3(a) above.

Notwithstanding the above, if the application of the uniform rate to a particular LDC would result in a significant under or over-recovery of costs, either party may seek a different rate from the Board on a case-by-case basis.

Position of the EDA, CEA, PWU and Hydro One:

No.

Position of Energy Probe:

Yes, if significant under or over recovery of costs is addressed as noted above.

4. What are the appropriate terms and conditions for a joint use agreement for access to the poles of electricity distribution companies?

a. Should there be a standard form of agreement for the entire province with the provision for bilateral negotiation of individual terms and conditions?

Position of the parties:

The parties agree that the terms and conditions contemplated in Issue 4 can be dealt with separately by the parties after the Board makes a determination with respect to the other issues on the Issues List.

Following the Board's decision with respect to the other issues, and if the Board answers Issue One in the affirmative the parties will, within four months report to the Board progress to date on their negotiations respecting terms and conditions, and may seek such further orders or directions as may be appropriate including orders or directions respecting: (a) which terms or conditions, if any, should be mandatory and (b) which terms are open to individual negotiations between the parties.

Pending the outcome of the negotiations referred to above, CCTA, CEA and EDA have agreed to recommend to their respective members not to deny access or withhold permits for the sole reason that no agreement is in place provided that the user is paying the rate established by the Board.

5. How should the new licence conditions be implemented?

a. What should be the impact on existing contracts?

All parties, except MTS Allstream agree as follows:

The new license conditions should not impact existing contracts, except as contemplated in those contracts.

The licence conditions will be deemed to apply at the expiry of the current term of each existing contract.

Where no contract exists at the time of the decision, the licence conditions will apply immediately.

Process

With respect to the Oral Hearing process, the parties recommend that the final argument be presented in writing.

APPENDIX A

ISSUES LIST

1. Should the Board set licence conditions for distributors with respect to joint pole use providing for conditions of access, including the charge for such access?

2. If the Board does set conditions of access, to what types of cable or telecommunications service providers should these conditions apply to?

3. If the Board does set conditions of access, what is the appropriate charge for joint pole use?

    a. What principles, elements and methodology should be considered in the calculation of the charge?
    b. How should the charge be applied?
    c. Should it be a uniform charge for the entire province?

4. What are the appropriate terms and conditions for a joint use agreement for access to the poles of electricity distribution companies?

    a. Should there be a standard form of agreement for the entire province with the provision for bilateral negotiation of individual terms and conditions?

5. How should the new licence conditions be implemented?

    a. What should be the impact on existing contracts?

APPENDIX B

ARTICLE 1 – DEFINITIONS

The terms defined in this Article for the purposes of this Agreement shall have the following meanings unless the context expressly or by necessary implication otherwise requires.

1.1 **"Affix", "Affixed" and "Affixing"** means to fasten, by the Licensee or its contractors, the material, apparatus, equipment or facilities of the Licensee to poles or other equipment of the Owner or In-span.

1.2 **"Annual License Fee"** means the annual payment by the Licensee to the Owner determined in accordance with Article 11.

1.3 **"Annual Maintenance Tree Trimming Fee"** means the optional annual fee for vegetation management discussed in Articles 10 and 11.

1.4 **"Approval" or "Approved"** means the permission granted by the Owner, to the Licensee, for the Licensee to Affix its Attachments, as specified in the Permit, to poles or other equipment of the Owner or In-span.

1.5 **"Attachment"** means any material, apparatus, equipment or facility owned by the Licensee which the Owner has Approved for Affixing to poles or other equipment of the Owner or In-span, including, but without limiting the generality of the foregoing:

- Licensee-owned cable not directly attached to a pole, but Over Lashed to a cable or Support Strand not owned by the Licensee;
- Service Drops Affixed directly to the Owner's poles;
- Service Drops Affixed In-span to a Support Strand supported by poles of the Owner; and
- Attachments owned by the Licensee but emanating from a cable not owned by the Licensee.

[Attachment excludes wireless transmitters and power line carriers.] NOT AGREED.

1.6 **"Cable Riser/Dip"** means a cable attached along a vertical portion of a pole to allow the cable to change its position from/to an underground route to/from an overhead route.

1.7 **"Clearance Pole"** means a single pole, owned by the Owner and used by the Licensee solely to establish and maintain clearance for its Service Drops.

1.8 **“Communications Space”** means a vertical space on the pole, usually 600 mm in length, within which Telecommunications Attachments are made.

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ONTARIO ENERGY BOARD

Volume: MOTIONS DAY

12 OCTOBER 2004

BEFORE:

G. KAISER
PRESIDING MEMBER AND VICE
CHAIR

P. SOMMERVILLE
MEMBER

C. CHAPLIN
MEMBER

1

RP-2003-0249

2

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B); AND IN THE MATTER OF an Application pursuant to section 74 of the Ontario Energy Board Act, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licences of electricity distributors.

3

RP-2003-0249

4

12 OCTOBER 2004

5

HEARING HELD AT TORONTO, ONTARIO

6

APPEARANCES

JENNIFER LEA
Board Counsel

JUDITH FERNANDES
Board Staff

TOM BRETT
Canadian Cable Television Association

KELLY FRIEDMAN
The Electricity Distributors Association

PETER RUBY
Canadian Electricity Association

BRIAN DINGWALL
Energy Probe

ADELE PANTUSA
Hydro One

ANDREW LOKAN
Power Workers' Union

NORMAN SMITH
Quebecor/Videotron Telecom

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--- Upon commencing at 9:34 a.m.

15

MR. KAISER: Good morning, ladies and gentlemen. This is, as you know, an application by the Canadian Cable Television Association filed on December 16th, 2003, to amend licenses of the electricity distributors, in particular with respect to pole access and access charges relating to that access. In particular, today's hearing relates to Procedural Order No. 4, which was issued by the Secretary on October 1st.

16

My name is Gordon Kaiser. I'll be chairing this Panel. With me are Paul Sommerville and Cythnia Chaplin.

17

Before we proceed any further, could we have the appearances, please.

18

APPEARANCES:

19

MS. FRIEDMAN: Good morning. I'm Kelly Friedman for the Electricity Distributors Association, and with me is Maurice Tucci of the Electricity Distributors Association.

20

MR. RUBY: Peter Ruby for the Canadian Electricity Association, and with me is Helen Sam of the Canadian Electricity Association.

21

MR. BRETT: Good morning, Mr. Chairman, Panel. My name is Tom Brett. I represent the Canadian Cable Television Association, and with me is Mr. John Armstrong of Rogers Cable on my immediate right and Mr. Roy O'Brien of the Association on my far right.

22

MS. LEA: Jennifer Lea for the Board, Board counsel, and with me is Judith Fernandes Board Staff.

23

MR. DINGWALL: Good morning, Panel. My name is Brian Dingwall. I'm here as counsel to Energy Probe, together with David MacIntosh from Energy Probe.

24

MS. PANTUSA: Good morning. Adele Pantusa from Hydro One legal department, and John Boldt is here from Hydro One as well.

25
MR. LOKAN: Andrew Lokan, counsel for the Power Workers' Union.

26
MR. SMITH: Norman Smith from Quebecor-Videotron Telecom, Montreal.

27
MR. KAISER: I'm sorry, could you repeat that, please. Mr. Smith.

28
MR. SMITH: Norman Smith from Quebecor.

29
MR. KAISER: Thank you. Is that it? Anyone else?

30
PRELIMINARY MATTERS:

31
MR. KAISER: As you know from the Procedural Order, there were five matters that we wished to address today. One of them is being rescinded, and that's the Board motion with respect to answers to certain interrogatories, the last one. So we will actually have four matters.

32
The first is this cost issue, which, in the motions day order, was described as whether or not the EDA and the CEA would be eligible for costs and who would bear the costs. That matter we'll hear first and we will come back to that in a moment.

33
The second matter is a motion by the EDA dated September 13th, 2004 to bifurcate these proceedings, to essentially leave into two issues and deal with the actual rates or specifics of the rates or charges in the second hearing.

34
The third motion is the motion of the CEA dated September 24th, and this relates to the disclosure of certain confidential information, certain interrogatories that were filed with the Board in confidence by the CCTA and MTS Allstream, and also the CEA seeking an order requiring the CCTA to answer certain interrogatories, namely Interrogatory No. 3(b). That's the third matter.

35
The fourth matter is a motion by the CCTA dated September 28th, seeking an order requiring the EDA to answer certain interrogatories, namely 4(a) to (j) and 6(a) to (g), of the EDA.

36
Dealing first with the cost matter, the Board has given some consideration to this issue, and in the course of your submissions, we'd like you to address two issues, amongst others of course. The first is, who here is representing the electricity distributors? Are some of them represented independently, or they represented through one association or the other? So that may be relevant to some of you, and if you could address that, it would be much appreciated.

37
The other is a matter of a proposal the Board would like you to consider. This is a bit of an unusual

procedure. Typically, an applicant will pay the costs. In this situation, it's complicated somewhat because
the telecom companies have intervened, and as I understand it, they're seeking relief similar to the cable
companies. So in the strictest sense or in a broad sense it may be considered to be two applicants.

38
Then again, there are other cases where customers, or potential customers, which is really what we have
here, are seeking relief or service from a regulated utility, it's the utility that pays. So an argument could
be made that the electricity distributors would pay.

39
Then of course we have this cost issue which is complicated by the - in the first case, a Board prior
decision, but in the second case with the subsequent application that was made in the -- I believe it was in
the April 23rd letter of the EDA as to whether there is duplication or whether these associations should
receive costs in the first instance. And as you know, the Board did make a ruling back in May, I think it
was May 5th, and relied upon an exception in its rules, although I don't think reasons were given. That
was before my time.

40
In any event, this is a somewhat unusual situation, to say the least. And the Board would like you to
consider the following proposal. It is that all the parties would pay their own costs. The Board costs
would be split between the cable companies and the telecom companies on the one hand and the
electricity distributors on the other hand, or what Mr. Sommerville likes to call the polees and the polers.

41
And thirdly, we have the situation where one of the parties, in reliance of a Board ruling as to eligibility
of costs, has gone out and incurred costs, although I believe those are being split between the two
associations. And we would, for this purpose, add those costs, the costs of that evidence, to the Board
costs.

42
So if you would consider that proposal in your submissions, as well as the submissions you might have
intended to make in the first instance, we would be grateful.

43
I don't know who wants to go first. I will leave it up to the EDA, since it was their letter that triggered
this cost matter.

44
MR. BRETT: Could I just ask, as a preliminary matter, Mr. Chairman, if you wouldn't mind. We're
having a little difficulty picking up everything you're saying.

45
MR. KAISER: All right.

46
MR. BRETT: Thank you very much.

47
MOTION BY THE CANADIAN ELECTRICITY
ASSOCIATION AND THE ELECTRICITY
DISTRIBUTORS ASSOCIATION RE COST
ELIGIBILITY AND ALLOCATION:

48
SUBMISSIONS BY MR. RUBY:

49
MR. RUBY: If Mr. Brett has no objection, maybe I would go first for the CEA. Dealing, perhaps, first with the first issue, Mr. Chairman, that you raised in terms of who these associations are and who represents who. The Canadian Electricity Association, for the purpose of this proceeding and generally, deals only with questions of national interest. It is not representing the particular interests of specific utilities, in this case, Ontario electricity distributors. Of the 32 electricity distributor members of the CEA, only seven are located in Ontario, and not all of them have participated in the CEA's efforts, in this particular proceeding.

50
And in the CEA's original letter of intervention, what it proposed to do was provide this Board with the national perspective on the joint-use issue. It won't come as any surprise to anyone here or to the Panel that this is an issue that has been confronted in nearly every province in Canada, as well as in the balance of North America. And the CEA has been involved for some years and dealing with this issue from a big-picture perspective, and that is what it hopes and is bringing to the table. And, in fact, the evidence that is adduced to date has been confined only to the big-picture issues. What are the correct economic principles to apply, fairness principles, competitive neutrality?

51
With respect, for example, to the issues list, the final issue was how to implement whatever the Board decides to impose, and the CEA explicitly said, We're not going to address that at all. That's a matter for individual electricity utilities in Ontario.

52
Another example deals with the non-financial conditions of access, the contracts that have been put forward. The CEA has offered, by way of example, some contracts in other parts of the country but does not propose there is any one right way to do it or any one contract that should apply. The individual utilities are the ones that will have to confront that issue.

53
So for the purpose of this proceeding, the CEA, more than anything, is acting as a source of information for the Board. It has a certain amount of expertise, it has information about how joint pole use is handled in the rest of Canada, and its evidence to date has been, and our intention -- it is our intention that it will continue to be confined to the national and, for that matter, international issues, that is, looking at the United States, as well as dealing with -- to the extent federal issues impinge, for example, issues of telecommunications, policy matters, before the CRTC, those are matters that the CEA has addressed in the past as a national organization, and can bring some evidence and submissions to bear.

54
So, to answer your question, Mr. Chair, it's our submission that the CEA is not here representing its

Ontario members. Many of them, certainly the larger ones, have intervened directly in this proceeding,
and the membership of its Ontario members is co-extensive with the membership of the EDA.

55
So as not to put too fine a point on it, for example, costing information has been a key issue, or will be a
key issue today. The CEA proposes to address that only from a regulatory efficiency point of view and
not from the point of view of who has information and who doesn't. That's not its role in this proceeding,
and it doesn't have a mandate to address that.

56
So hopefully that clarifies the role the CEA intends to play, and who it's representing here. And so it's my
submission that there is no overlap, and the EDA and the CEA have gone to considerable efforts to make
sure that, from an evidentiary point of view, the Board is not provided with overlapping evidence and
submissions. And a good example of that is the joint expert report that we've put forward together so that
there aren't two from industry organizations.

57
Dealing, if I may, with the broader question about costs for the CEA - and, Mr. Chairman, I will come to
your proposal - I've provided the Board Staff with a compendium of some of the matters that are filed
already before the Board. None of this is new evidence. I've just put it together in one place to try and
reduce the amount of flipping. I've given some to the other parties. There are more copies behind me in
this box for those of you who haven't received a copy.

58
MS. LEA: Can I just interject for a moment, please.

59
Mr. Chairman, although this is not new evidence, we often, in motions, do mark things for identification
so they're easy to refer to afterwards. Do you wish us to have an exhibit numbering system for materials
like this?

60
MR. KAISER: Yes. We'll mark it for identification.

61
MS. LEA: All right. Then we'll mark it for identification, Exhibit 1 on the motion. Exhibit 1 on the
motion, please.

62
EXHIBIT NO. 1 ON THE MOTION: COMPENDIUM OF DOCUMENTS PROVIDED BY THE
CANADIAN ELECTRICITY ASSOCIATION

63
MR. RUBY: And if the Panel would turn to tab A, you will see there are a number of tabs, 1 to 10,
and I propose just to run through them very quickly in the order they appear.

64
Under the first tab is CEA's original intervention letter which describes the CEA, points out who its
membership is. And, of course, it's not just electricity distributors; it also represents about 95 percent of
the installed generation capacity in Canada, as well as transmitters. But in this proceeding, it's largely
dealing with the distribution issue. And you will see in the third paragraph, towards the end,

that what the
CEA intends to do is put right up front that it was to provide a national perspective and not necessarily to
go into individual circumstances of its Ontario utility members.

65
At the next tab is the letter from the Board that the CEA relies on with respect to costs. No objection was
taken to this, either to the CEA's request for costs, until August of this year. So my friend's objection, the
CCTA's objection, coming months after the CEA was granted costs and, in fact, acted on, as we'll get to a
little bit later, causes the CEA a great deal of concern, and --

66
MR. KAISER: Can I just stop you there. Is that the case, Mr. Brett?

67
MR. BRETT: Mr. Chairman, we did object to that. I think, in a letter that we sent in, we have reflected
on that subject a little more since then. And, in light of the fact that the -- let me put it
this way: Number 1, we accept your proposal for the treatment of the CEA's costs in the
circumstances; and number 2, given the fact that the Board had approved those costs
back in May, we would with draw our objection that we made in the letter.

68
MR. KAISER: Thank you very much.

69
Continue, then.

70
MR. RUBY: Well, that, Mr. Chairman, I'd suggest largely solves the CEA's problem.

71
MR. KAISER: I think so.

72
MR. RUBY: And maybe, in terms of dealing with how to split, generally, the costs in the proceedings,
if I may, I'll reserve my comments until after the other parties have had a chance to
address the general issue.

73
MR. KAISER: That's fine.

74
MR. RUBY: Thank you.

75
MR. KAISER: Who is next?

76
SUBMISSIONS BY MS. FRIEDMAN:

77
MS. FRIEDMAN: Good morning, Mr. Chairman. Kelly Friedman for the EDA.

78
As Mr. Brett has correctly pointed out in correspondence, the EDA has the onus to establish its cost
eligibility, so what I'd like to do is briefly take you through the Practice Direction on Cost Awards and
Practice Direction on Cost Awards explain why the EDA, in this case, ought to be given costs.

79
Just to follow up very briefly on Mr. Ruby's comments, it is the EDA that represents the

Ontario
electricity distributors in this proceeding. As is the case in all proceedings in which the EDA intervenes,
we don't represent the interests of any one particular LDC, but through the EDA's democratic processes -
it has a board of directors and many consultative mechanisms - we try to pull out the principles and the
commonalities that our members have and present them to the Board. So I hope that clarifies the EDA's
perspective.

80
But we are, and as I will get to when I talk about specifics as to why the EDA ought to be given costs, we
try to coalesce the overall general principles that the LDCs have in the province, to present them to the
Board so that the Board does not have to hear the evidence of over 90 distributors.

81
MR. KAISER: Can I just stop you there. In this case, have you been able to coalesce? Do all of the
LDCs have the same position in this case?

82
MS. FRIEDMAN: The overall position of the EDA is that LDCs should be allowed to negotiate
locally, and that is the consensus amongst the membership. So what we've done -- in this proceeding, there are, of course, individual LDCs who have intervened
and we have regularly communicated with them, for example, with respect to the selection of an expert witness, what the experts have told us they are going to say
to make sure they were comfortable. So in that sense, yes.

83
In addition to having board resolutions of the EDA, which in itself is representative of the overall
membership, we've also had ongoing communications with individual LDCs, both intervenor LDCs and
non-intervenor LDCs, on a regular basis to explain our strategy and make sure they're on side.

84
It is never possible for the EDA to ensure that every single member is content with the way that we are
proceeding, but we let them know what we're doing so that if they are not content with it, they can come
forward and speak on their own behalf. And we have not had that situation in this proceeding.

85
MR. KAISER: So just to be clear, you will be speaking for them all?

86
MS. FRIEDMAN: That's right.

87
MR. KAISER: Thank you. Sorry I interrupted you.

88
MS. FRIEDMAN: No problem.

89
The Practice Direction on Cost Awards gives us guidance as to whether the EDA should be given cost
eligibility. Section 3.03 says that:

90
"A party in a Board proceeding is eligible to apply for a cost award where the party (a), primarily
represents the direct interests of consumers in relation to regulated services."

91

Now, the EDA said that, in this case, it does represent the direct interests of the ratepayers, albeit, not in a regulated service insofar as pole access rates go, because there hasn't been a decision to regulate, but with respect to distribution rates. In this proceeding, the cable companies are attempting to fix a rate for pole access. In my submission, a low rate which would minimize the contribution of cable companies to the revenue requirements of the LDCs. The EDA's opposition represents the interests of consumers, in other words, are not content to take a small contribution toward their revenue requirement, which would mean higher distribution rates in the province.

92

Sub (b) of the same section, 3.03, says that a party is eligible to apply for costs if it primarily represents a public interest relevant to the Board's mandate. The EDA points to two particular public interest elements relevant to the Board's mandate; protecting the interests of consumers with respect to prices, and that relates to what I just said. Again, the EDA's view is that the lower the contribution of the cable companies to pole costs, the more distribution customers will have to pay towards those costs, as well as the public interest to facilitate the maintenance of a financially viable electricity industry.

93

Section 3.04 tells the Board that in making the determination, a party is eligible -- the Board may also consider any other factors the Board considers relevant. And, in this case, we'd like the Board to consider the fact that the EDA has, as we just discussed, made attempts to gather the general principles of the overall membership instead of having the Board have to listen to arguments from each and every LDC that has the interests of their local ratepayers in mind. We think that it is crucial in this proceeding to get a province-wide perspective in light of the fact that each and every distribution license in the province is sought to be changed.

94

Now, we recognize, of course, that pursuant to section 3.05(b), groups of distributors are not generally eligible for costs. But we submit further, that under 3.06, there are special circumstances in this case which point to the EDA being eligible for a cost award.

95

First, is that there is a strong public interest -- a strong government policy with respect to electricity prices for consumers. And we think that this proceeding fundamentally involves what prices consumers are going to pay for their electricity. It has province-wide implications, as every license in the province is sought to be changed.

96

The EDA has made great efforts to gather the views of a wide range of LDCs and pull out the general principles of commonality, so as to shift the focus from local interests to more general provincial interest. And as already discussed, the EDA thus far has been successful in consulting with its members and gathering their views to present them to the Board, for example, with respect to one expert's report.

97

Before the expert was retained, and as Mr. Ruby said, jointly with the CEA, we had conference

calls with
individual LDCs and their individual counsel who had originally contemplated retaining their own
experts. And through consultation, we were able to arrive at one expert to retain on behalf of all LDCs.

98
The CCTA has, and in correspondence will no doubt continue, to argue that the LDCs, as a group, have
prompted this proceeding through intransigence is one word that has been used or abuse of market
power. I submit that the evidence will reveal that that is simply incorrect, that there is no evidence of
widespread abuse of market power and, therefore, no reason not to negotiate individually with local cable
companies.

99
And in fact, the CCTA, the applicant's application has caused the breakdown of the negotiations that
were occurring locally in two respects. Firstly, it encouraged -- the application encouraged its
membership not to sign deals that were close to finalization.

100
MR. KAISER: Excuse me. How does all of this relate to costs?

101
MS. FRIEDMAN: It's the special circumstances, quite frankly, much of it was in reply. I'll take a
step back.

102
Mr. Brett objected to the EDA's basis for costs on the basis that it was the EDA or the LDCs as a group
who has caused the need for the application, even though it was brought by the applicant. And that need
stems from LDCs abusing their market power, or more generally, not negotiating in good faith.

103
One of the main points, and the evidence that this Board will hear from our side of the table, is that's
completely not the case. The LDCs have negotiated in good faith and it was, in fact, the fact of the
application being brought by the CCTA that caused the breakdown in negotiations.

104
So it comes into the cost submissions in two ways: To reject Mr. Brett's opposition that we ought not to
get costs because we are the fault of the entire proceeding and, secondly, that the applicant -- which I will
get to -- should be the one to pay the costs in this proceeding. But I recognize it's difficult for the Panel to
hear submissions on what the evidence will be when you have not heard the evidence. So I will keep that
very brief.

105
Just let me point out one other point, that in -- the CCTA has been negotiating with a working group of
LDCs known as the Mearie working group, which is a very small subset of the EDA's membership. And
through those negotiations, we have been advised that insofar as discussion of rates or rate methodology
are concerned, the CCTA has refused to negotiate further because of this application.

106
MR. KAISER: I don't think we should be getting into some kind of speculative evidence.

107

MS. FRIEDMAN: Thank you, Mr. Chair.

108
MR. KAISER: Mr. Brett's objection was based upon the rules. Your argument, as I understand it, is you rely on the exception.

109
MS. FRIEDMAN: That's right.

110
MR. KAISER: What about the Board's proposal? Do you have any view on that?

111
MS. FRIEDMAN: I do. The EDA is not content to accept the Board's proposal, and again for the same reasons. The applicant has commenced this application and the basis for the application is the intransigence of the LDCs to negotiate. We submit that unless the Board makes a finding of some individual LDC actually being intransigent, or negotiating in bad faith, or abusing market power, no LDC ought to have to pay the costs of this proceeding.

112
MR. KAISER: So your submission would be that we hear the evidence, and if we find out that your people were dragging their feet, then we could award costs against you?

113
MS. FRIEDMAN: That's right.

114
MR. KAISER: All right.

115
Mr. Ruby, where are you on this issue, the Board's proposal? Mr. Brett says he's in. Where are you?

116
MR. RUBY: The CEA's position is that the applicant should bear the costs. This proceeding is paralleled by others in the country. In this particular instance, the applicant has brought a proceeding and I take note of -- and entirely agree with, Mr. Chair, your comments that there are actually multiple applicants here; that is, the telecommunications companies as well, although they're formally clothed as intervenors, they're seeking the same relief as the CCTA, and, in my submission, should be treated the same way.

117
And the way they should be treated is as proponents. This is not an isolated proceeding. There are two other provinces where joint-use proceedings have taken place before provincial regulators and in both cases, it was the local power utilities that sought the regulation of joint-use rates by the authority, that is, they were the applicant in that circumstance. They were the ones who sought regulatory intervention, and in those cases, appropriately bear the costs.

118
The CCTA, it's also not its first attempt to have this dealt with by a regulator. As the Panel, no doubt, knows, the CCTA, in 1997, I believe, approached the federal telecommunications regulator, the CRTC, on this very issue in a case that ultimately went all the way to the Supreme Court of Canada before being decided against the CCTA.

119
The point I am trying to make, Mr. Chair, is that, in the usual course, the proponent seeking the change to the regulatory system - and, in Ontario, this would be a complete change as joint-use rates have never been regulated in this province - should bear the cost of seeking a change for its benefit.

120
And in these circumstances, it's worth noting that the CCTA's members are entirely privately owned. Some of them are public companies. But they are shareholder, profit-maximizing entities who are, in the most direct sense, seeking a commercial benefit, that is, to lower their costs.

121
The power utilities, the electricity distributors in Ontario, none of them have taken the position that what they are seeking are market-based rates, for example, for the use of power poles. Everybody is looking at a cost solution, that is, to figure out what the appropriate costing level is of the poles, and that will determine the fee.

122
And in that case, that is a matter that, as Ms. Friedman says, goes directly to distribution rates, ultimately in the long term. Now, in a PBR regime, there may be sort of a bit of time before that occurs, but what we're talking about is cost recovery, not market-based rates.

123
So on one hand, you have a proponent who's seeking a brand new type of regulation in Ontario that reduces its cost so that it can make a profit or compete in a better way in the marketplace, however it decides to deal with that issue, and the other side, price-regulated public utilities that have limits on what they can do with cost recovery.

124
In my submission, in those circumstances, the most appropriate allocation of costs of this proceeding is that they should be entirely borne by the proponents, the CCTA and, as I say, the telecommunications companies that have the same position.

125
MR. KAISER: Thank you.

126
Mr. Smith, Videotron-Quebecor, do they have any position on this?

127
MR. SMITH: We have not really compared --

128
[Audio feedback]

129
MR. SMITH: I'm sorry. Our representative from Quebecor was held up in Montreal, and my purpose here, for right now, would be just to be present and soak in what's coming out next. He will be here tomorrow morning. His name is Dennis Berland.

130
MR. KAISER: Is he a lawyer?

131
MR. SMITH: Yes.

132
MR. RUBY: Mr. Chair, I don't mean to interrupt, but I don't know if Mr. Smith is aware, Videotron is listed as an observer in this proceeding and not an intervenor. Again, my remarks concerning telecommunications companies being treated the same way as the CCTA apply to intervenors; the two I was thinking of were 360 Networks and MTS Allstream.

133
MR. KAISER: Is anyone here from Allstream? Anyone else care to make any submissions on this cost issue?

134
MR. DINGWALL: Good morning, Mr. Chairman. My name is Brian Dingwall. I'm here representing Energy Probe.

135
I have a question of clarification which may provide some efficiencies and shorten the content of my submissions.

136
Energy Probe, as you may or may not be aware, is an intervenor with a long history before the Board representing consumer and environmental interests, and has been accepted as an intervenor eligible for costs in this process.

137
For the purpose of interpretation of the Board's proposal, is it the Board's intention, then, that Energy Probe be subsumed within what you've referred to, Mr. Chairman, as the Board's costs? Or are you suggesting that we speak to our own costs in this motions day today?

138
MR. KAISER: I think, Mr. Dingwall, our proposal was that each party bear their own costs, and the only thing that got lumped into the Board's costs were the costs of the evidence prepared jointly by the two associations. But we're quite happy to hear your submissions on this point.

139
SUBMISSIONS BY MR. DINGWALL:

140
MR. DINGWALL: Energy Probe is a non-profit environmental and consumer organization which promotes economic efficiency in the use of resources. Energy Probe participates in national and provincial conferences and regulatory forums on energy issues which it believes to be in the public interest.

141
The foundation, which is Canada's third largest environmental policy organization and Canada's largest energy policy organization, has over 30,000 supporters, half of them in Ontario, of which most have tangibly expressed interest in energy issues. Energy Probe also has a strong consumer focus and is frequently acknowledged in the media as a consumer watchdog.

142
In recent years, Energy Probe has raised funds and acquired supporters on its strength as a consumer advocacy organization for many initiatives.

143
In this process, there is no consumer representation, apart from what the Electricity

Distributors
Association has referred to as its purported mandate as an exemption under the rules of eligibility for --
under the practice guideline for costs.

144
There are some significant issues on the table here which, frankly, require that there be some degree of
consumer organization participation.

145
One of these is access to monopoly resources, which is certainly something, as a consumer organization,
Energy Probe would not be comfortable with, the interests of consumers being represented by the
monopolies.

146
An additional consideration is the recognition and treatment of revenue received from pole rentals under
the revenue requirement of LDCs, which I understand is contested by many of the LDCs which are purporting to make that stand. Certainly, in the development of 2006 rate handbook, that does not seem
like a settled issue; however, it's one that may come up with some determination in this process.

147
MR. KAISER: Can I just stop you there. What's your position on that? Does your association have a
position on where that revenue should go?

148
MR. DINGWALL: Yes. It should clearly form part of the revenue requirement for LDCs. It is not
money that should go back to the shareholder, because ratepayers paid for the assets.

149
MR. KAISER: Thank you.

150
MR. DINGWALL: Now, with respect to Energy Probe's costs, in context of the other applicants and
the other parties to this process, Energy Probe is unique in that it does not have a
commercial interest in the outcome of this proceeding. Its interest is in the economic and social benefits to ratepayers of the determination of the proper treatment of the revenues and viable conditions for access to monopoly resources.

151
So to that extent, Energy Probe has no cost base upon which to fall back upon for the treatment of any
costs that it might have incurred to date, or which it might incur in the future as an eligible intervenor,
which was the previous determination.

152
I'm somewhat taken by surprise with the Board's suggestion this morning in that the Procedural Order did
not suggest that Energy Probe, having previously been determined eligible for costs, was not named in
the Procedural Order as a participant who should speak to its own relevance. So I am a little bit taken by
surprise by that contention.

153
Now, with respect to costs in general in this process, since that's what you're also asking parties to speak
to, it's our view that there are two basic elements to cost. One is the element of cost that relates to the

conduct of the parties in the duration of the proceeding, whether they've come to the table with clean
hands or not. And that's always a matter for consideration after the fact, after the hearing has taken place,
and it's certainly open to the Board to determine if one or another party has come to this forum as an
abuse of process or because there have been other abuses of monopoly power or bargaining in bad faith.
So at this point in time, I don't think it's appropriate for the Board to make a determination as to who has
come in with clean hands. That comes at the end of the day. But the balance of the cost process really
relates to, where is there an economic benefit and where is there an economic burden? And in the ice of
ratepayers, the economic benefit really flows into the clear establishment of a path of revenue which
shouldn't be subsumed under the revenue requirements of the LDCs.

154
So if this process results in either a clear tariff or a generic rate for joint pole use, then there is an
economic benefit to ratepayers in that determination. And if there is that economic benefit, certainly it
would be appropriate for the ratepayers to undertake the economic burden. There certainly seems to be
some history, I believe, from the processes around the formation of the previous rate handbook, where
one or a number of associations have used a cost order to flow through costs to individual LDCs. And in
our suggestion, that type of approach would be certainly appropriate in this case.

155
But given the absence of representatives, representing solely the ratepayer interests, it's Energy Probe's
view that it should not assume its own cost, or bear its own cost, but that those costs really, in order to fit
in with the fluidity of the hearing that is conceived by the Board's proposal, should be subsumed within
the Board's costs. Those are my submissions.

156
MR. KAISER: Thank you, Mr. Dingwall.

157
MR. BRETT: Mr. Chairman, I do have a couple of comments.

158
MR. KAISER: Certainly.

159
SUBMISSIONS BY MR. BRETT:

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MR. BRETT: I thought I should explain briefly my one-liner, that we do support the Board's proposal.

161
First of all, on the question of who represents the distributors, I think that question has been answered.
I'm not going to get into that. We've heard from the EDA as to what they think their role is, and so I don't
wish to comment further on that.

162
With respect to the costs and the Board's proposal, just three or four brief points. First, we believe you
have the power to do that because the statute gives the Board broad powers to determine who pays whom
in a cost context, who pays what costs.

163

Second, as we stated in our earlier letter, we don't think the EDA should be eligible for costs based on the
rules. The rules are quite clear that distributors, both individually and as a group, are not eligible. And I
don't see very much difference between -- any difference between a group of distributors and the EDA,
which purports to represent all of the distributors.

164
And we don't think that they have -- we think that that section 3.05 is very specific. It says that if you're
one of those categories, you don't get costs. There is a provision whereby any party can make, can try and
elicit special circumstances, but the onus is on the party to elicit those circumstances and we don't think
that the EDA has done so.

165
And with respect to who should pay the costs, we believe this is different. This is a different sort of case
than a typical case. A typical case is where the utility is applying and there are a number of intervenors
and the utility is in a position where it conventionally pays costs to the intervenors. The utility's costs are
considered operating costs that would be passed through to its customers under cost-of-service rate
making. So that this type of -- this case is quite different. I'm not going to get into all of the details of it,
because you've seen the correspondence and you've obviously thought about -- the Board Panel has
obviously thought about the circumstances as to how this has come about and the parties that are
involved.

166
So I would just reiterate that we're pretty well all commercial parties in this hearing. The LDCs are now
commercial entities, they've been asked to -- they get a return on capital. The other telecom providers are
commercial parties, we're clearly commercial parties.

167
So I think there is -- I think what you proposed is fair from our point of view. I will leave it at that. Thank
you very much.

168
MR. KAISER: You distinguish, Mr. Brett, between the CEA and EDA. You didn't object initially, as I
recall, to the CEA's --

169
MR. BRETT: No, I did not. And the other point I wanted to make, and I'm glad you reminded me of
that, was we did not object to Energy Probe either. An we never intended to object to
Energy Probe. So I have no objection to Energy Probe's costs being rolled into the base
that's going to be paid by the -- under your proposal by the group.

170
MR. KAISER: Thank you.

171
Any other comments?

172
MR. RUBY: Mr. Chair, if I may, just one small clarification. For the CEA, originally I had understood
that the proposal was to have the CEA's costs wrapped into the Board's costs because it

had been granted eligibility early in the proceeding.

173
MR. KAISER: Only the evidence.

174
MR. RUBY: The only clarification is whether it's the expert evidence or all of the evidence, because obviously the CEA has put in a great deal of effort to accumulate data from all over the country on certain issues that wouldn't otherwise be available to the Board. So I take it, Mr. Chair, from your last comment, that it's all of the CEA's evidence and not just the expert evidence.

175
MR. KAISER: Well, there may be some confusion in our own mind on that, Mr. Ruby. I think we were thinking of the expert evidence. I'm wondering if I could ask you -- we're going to reserve on this and rule after lunch -- but since I, at least, had not thought of two bodies of evidence as opposed to one, I wonder if you could, in confidence, tell us how much money we're talking about in the two pots as it were. Is that possible?

176
MR. RUBY: If -- maybe at a break later today I can take a look at that.

177
MR. KAISER: Yes. If you would make that available through Board counsel.

178
MR. RUBY: Thank you.

179
MR. KAISER: Any other comments? As I said, we'll reserve on this matter. Our intention, with respect to all of these motions is to deliver a decision from the bench, as it were, after lunch, if that is agreeable. We understand that there is a settlement conference proceeding tomorrow, and I realize that in the ordinary circumstances, we'd probably wait on a cost ruling until the end of the case and then we could get into who was the bad guy and who was the good guy. But there are certain demands that have been placed upon the Board to make a ruling in advance so parties know how they can conduct themselves for this proceeding. So to the extent we can, we're going to make that ruling today.

180
Let's proceed next, if we can, to the second motion. This is the EDA motion to bifurcate.

181
MOTION BY THE ELECTRICITY DISTRIBUTORS ASSOCIATION RE BIFURCATING THE CCTA PROCEEDING:

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SUBMISSIONS BY MS. FRIEDMAN:

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MS. FRIEDMAN: Thank you, Mr. Chair.

184
The EDA's position on this motion is based on two principles. One, is that if the Board is

going to
regulate joint pole use, it's incumbent upon the Board to ensure that it is armed with all relevant data in
order to properly and effectively regulate the area. Only efficient charges will lead to appropriate sharing
of the poles, without cross subsidization.

185
The second principle is that if the Board is not going to regulate, or chooses to engage in a light-handed
form of regulation, the Board ought not to compel the gathering and filing of extensive data which it will
not ultimately use.

186
The relief sought by the EDA, at its simplest, is that the Board first consider issue number 1 on the issues
list. Should the Board set license conditions at all regarding joint pole use?

187
So to consider issue number 1 in phase one before data gathering analysis and filing, and then, if issue
number 1 is decided in the affirmative, move on to issues number 2 through 4 which should be
proceeded, we submit, by a motion to resolve an obvious dispute in the filings. The CCTA implies that
data is readily available and that the EDA LDCs are holding back from submitting the data for the Board,
and the EDA -- the LDCs tell the EDA that the CCTA is simply wrong. In other words, to avoid that
dispute and bifurcate, and decide issue number 1 first, and if the data becomes necessary, move on to
issues number 2 through 4.

188
I would like simply to make three points to sum up the EDA's position. A suggestion was made in written
correspondence by Mr. Brett that this motion is inconsistent with the issues list, and the EDA disagrees
with that. The EDA has not resiled from the issues list, but simply asks the Board to divide up the issues
list in a natural way, decide issue number 1 first. If it's decided in the affirmative, then move on to issues
2 through 4. If it's decided in the negative, then the proceeding ends there.

189
Secondly, the EDA submits that it is, indeed, a procedural motion only. It doesn't change the scope of the
proceeding. We recognize that all the issues on the issues list are, indeed, issues, but there is a hierarchy
of issues in that if issue number 1 is decided in the negative, the proceeding ends there.

190
Point number 3 is to, again, respond to a point made in correspondence by Mr. Brett about counsel
having discussed the issue of bifurcation at the issues conference. The EDA submits that there was never
a discussion about a bifurcation motion as such. What we do recall is that Mr. Brett did raise whether
non-financial terms could be dealt with separately from financial terms in some form of proceeding. The
EDA expressed an openness to discuss that and still believes that's a very good idea. But what we would
submit is that's appropriate for phase 2. If the Board decides to regulate, in other words issue number 1 is
decided in the affirmative, then we would be more than happy to discuss some kind of way to resolve
issues number 2 through 4 which separate out financial terms versus non-financial terms of the contract.

191
MR. KAISER: Can I just stop you there.

192
MS. FRIEDMAN: Yes.

193
MR. KAISER: Mr. Brett says in his letter of September 20th that there was extensive discussion of the desirability of having one or more stages to the proceeding at that time. Were you at this --

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MS. FRIEDMAN: I was, Mr. Chair. That's what I was speaking to.

195
MR. KAISER: And you say that's not correct?

196
MS. FRIEDMAN: Well, what I recall that discussion being about was this very issue of dividing the proceedings between financial and non-financial issues. What counsel discussed was the fact that it might be appropriate to deal with non-financial terms of access by way of settlement or technical conference off-line somehow, and leave the bulk of the work to be done by the Board dealing with financial terms, rate-setting methodology. But it was not a discussion dealing with bifurcation in the sense of what I'm discussing, dealing with the principle of whether regulation should occur, first, and then moving on to the other terms.

197
MR. KAISER: Thank you.

198
MS. FRIEDMAN: Those are my submissions, Mr. Chair.

199
MR. KAISER: Mr. Ruby, do you have a position on this motion?

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SUBMISSIONS BY MR. RUBY:

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MR. RUBY: Yes, and I will state it very briefly.

202
The CEA is in support of the motion. The only thing I can add, I think, to Ms. Friedman's submissions is that, from a practical point of view, the CEA, in anticipation of perhaps assisting the Board with some of the types of costing information that the CCTA is now seeking in a different motion to be heard later today which it clearly feels is important to have this matter properly determined by the Board, in the amount of time we've had in this proceeding, the CEA, even with its small number of members in Ontario, had a lot of trouble figuring out how to put that type of information together in a way that would be consistent and useful for the Board. That is, costing information can be sliced and diced, as the Board Panel knows, many different ways. And the CEA, from a practical point of view, is having a lot of trouble doing that even for its own uses, never mind to be used in the context of a regulatory proceeding.

203
So for what it's worth, for the limited number of Ontario distributors that are members of the CEA, bifurcating the proceeding would allow for the practical considerations, that is, the Board can go on in a timely manner to set policy guidelines; if Ms. Friedman's and the CEA's position holds, not regulate at

all, for example. And then if it becomes necessary, there will be enough time to get into the details of what amounts to and is rate-making and price regulation, with all of the data that is necessary.

204
MR. KAISER: Mr. Dingwall, do you have a position on this motion?

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SUBMISSIONS BY MR. DINGWALL:

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MR. DINGWALL: Yes. We believe bifurcation is not appropriate. Given the magnitude of issues that have been on the table since the issues day and all of that, it would really appear to provide an opportunity for delay that would undermine the integrity of the process. So we don't believe that the issues should be severed at this point. We think it would be most appropriate, with the ADR beginning tomorrow, to soldier on with the whole of the issues list.

207
MR. KAISER: Thank you.

208
Mr. Brett?

209
SUBMISSIONS BY MR. BRETT:

210
MR. BRETT: Thank you, Mr. Chairman, Panel. Yes, we have some comments on this. We have problems with the -- big problems with the proposal to bifurcate the hearing for four reasons.

211
The first is, in our view, the real issue before the Board in this hearing, the most critical issue, really, is not whether to regulate power attachment charges, pole attachment agreements, or not, but rather what the level of charge should be and what the basis or formula -- underlying formula for deriving that charge should be. That's what we think this hearing is about, in reality.

212
These utilities poles are, after all, monopoly facilities. They're essential facilities not only for the utilities but also for the telecommunications industry and suppliers. There's no market for pole attachments. And as a practical matter, the construction of alternative infrastructure is neither possible nor desirable. Everybody knows that in this room, I think. Everybody has known it for a long time.

213
And there is, we will show, we think, in the hearing, a record of this monopoly position being abused, and that can be found in the correspondence attached to our answers to the Board Staff Interrogatories 2 and 6, and at tabs 2 and tabs 9 of our volume that we submitted under letter of September 27th to submit those responses, the CCTA's IR responses to everybody.

214
But the practice of asking -- so our members operate under a substantial disadvantage. The practice of asking for substantially higher charges has been widespread, and our members have often signed agreements essentially in order to preserve the ability to have access. Many have signed

agreements,
interim agreements, because they have realized that if they didn't sign them, they wouldn't be allowed to
conduct -- to continue to conduct their business. All of this at the time that our industry is competing
directly with the telephone industry, as you know, in many of these areas, and in some cases, telephone --
in numerous cases, actually, telephone affiliates of the electric industries in Ontario in the provision of
high-speed data services and Internet access.

215
The telephone industry has its own, as you know, historical long-standing arrangement with Ontario
utilities, but the cable industry finds itself embroiled in a web of different negotiations against a backdrop
of threats.

216
Now, finally, the Supreme Court of Canada, as you all know, recently told the CRTC which had, after an
exhaustive and lengthy proceeding, decided on a new pole rental charge, I believe 15.82 -- 89, that the
CRTC did not, under the Telecommunications Act, as presently drafted, have the authority to set the
charge. So this Board is the logical regulator, and all parties to this agreement, to this proceeding, have
already agreed that it has the jurisdiction to do so.

217
Finally, every other regulator in both Canada and the United States, when asked, has agreed to regulate
pole rental charges. In Canada, the CRTC has, of course, long regulated the telephone industry pole
rental charges for cable television and related attachments, as you know. Regulators in Nova Scotia and
Alberta have recently regulated pole charges. And in Saskatchewan, Manitoba, and Newfoundland, the
monopoly telephone companies have established charges in the same range, within one or two dollars of
the level set by the CRTC on a province-wide basis, and the same goes for Nova Scotia and Alberta.

218
In all of these various provinces, in several provinces - Ontario, B.C., and Quebec - the telephone
companies and the electric utilities have joint ownership of poles. And, of course, wherever there is a
joint grid, the cable company is renting space from the telephone company in one instance, that is, Bell in
Ontario, and 200 yards along -- they're paying the CRTC an established charge for renting that pole, and
200 yards along, they're trying to rent or put their attachment on an electric utility pole for which the
electric utilities are saying there should be no regulation, or local regulation, whatever that means.

219
The same pattern is true in the United States. Many of the states, including Michigan, New York,
California, and Vermont, have established uniform state rates for all electric utilities in the state and the
FCC administers a formula similar to the one being proposed by the CCTA, a usage base rate which
yields, incidentally, rental charges much lower than the ones now being proposed by the CCTA.

220
Finally, Mr. Chairman and Panel, this is not rocket science. I mean, this Board, every week of the year,
deals with matters more complicated than this whenever it deals with major rate cases. This ought not to

take a whole lot of time. There are issues, but it is not rocket science. It's a lot simpler than a major rate
case.

221
And so in summary, on this issue, we say that the -- this proceeding is really not about whether the Board
should regulate at all. Clearly, it should, and we are confident that it will once it sees all of the evidence
in the case. The real issue is, rather, the level of the charge and the formula that underpins that. And
therefore, from or point of view, it makes no sense at all to talk about splitting off an issue that is not the
central issue in the case. It's a sort of gratuitous move that doesn't accomplish very much.

222
I want to comment briefly on two other problems we have. We think that this motion invites -- and that
these next two points are procedural in nature. But we think that this motion invites the Board, in effect,
to misuse its powers under section 8, and to make a decision that would be very unfair to the CCTA. The
issues list for the proceeding was determined by this Board in Procedural Order No. 3, in July 7th of
2004.

223
As you know, the parties had recommended the proposed issues list to the Board following an issues
conference on June 29th where the parties, including the EDA and the CEA, reached a unanimous
agreement on the issues list for the proceeding.

224
The parties spent most of the day with Board Staff in attendance discussing and negotiating an acceptable
issues list. There was debate and discussion of a multi-stage process or of whether or not one issue could
be, sort of, set out as a priority issue, but there was no agreement on that point. All parties made
compromises to avoid a contested issues list and move the process forward and expressed general
satisfaction with the result. No party challenged the agreed list, and the Board was able to cancel the
issues day and approve the issues list.

225
The parties have prepared their evidence, including interrogatory responses, on the basis of that list. In
the CCTA's view, nothing has transpired between July 7th and today which calls into question the
conclusions reached at the issues conference. Certainly, nothing to justify such a radical change to the
scope of the proceeding.

226
If the Board were to accept the motion, it would call into question the fairness and integrity of the entire
issues delineation process. Why have an issues conference and an issues day if a party can come along
several months later on the eve of the settlement conference and propose a 360 degree change?

227
As we said in our letter of September 20th, the time for this matter to be raised by the EDA, and in the
absence of agreement settled by the Board, was at the issues conference and the issues day respectively.
The CCTA, we would never have agreed to the inclusion of item 1 on the issues list, never, had we
imagined for one moment that the EDA would try to make it, effectively, the sole issue of the first
tranche of the hearing. We would never have agreed.

228
What the EDA is asking, in effect, is to change the subject matter of the hearing. They have stated that if
it is successful in the proposed phase one, there will be no proposed phase two. That's a fundamental
change in the hearing at the 11th hour.

229
Finally, section 8 we don't think is an appropriate basis to justify the Board ordering such a major
change. The Board's traditionally used its motion powers to make decisions on motions in the course of a
proceeding to rule on matters of a procedural nature, such as whether requiring parties to produce
specific information in response to interrogatories, dealing with claims of confidentiality and exceptions
to those claims, adjusting dates for the filing of evidence, IR responses, argument and the like, scheduling
of panels, decisions -- and then the decisions in the hour-to-hour conduct of the hearing, whether
witnesses must answer questions and so on. I think these are different questions.

230
I know what the rules say, but I think these are different questions. These are different questions than the
sort of -- than what you're being asked to do now, and I think there would be some significant procedural
unfairness in acceding to this motion at this time, given the lack of any change in anything new since the
issues day.

231
Finally, two points. We think it would be highly prejudicial to the CCTA for several reasons. First of all,
we have done a great deal of work in assembling evidence, including all and complete responses to many
interrogatories. We've hired expert witnesses to prepare material on all of these issues, what the
appropriate level of charge should be, what the regulatory practice is elsewhere, what the appropriate
formula should be. We provided a great deal of information to the Board in our interrogatory responses.

232
The EDA, by contrast, appears to have done little work and filed incomplete, in some cases, almost
perfunctory answers to several questions. So we have a situation where one party to the dispute has
provided much more information than the other.

233
Moreover, the EDA waited until the interrogatory process of the other parties were in to file its motion to
put the proceeding in two and have the Board consider only one of these issues, and delay the
consideration of the other issues until some indefinite time in the future.

234
Finally, on this point, the motion is prejudicial because if it were accepted, it would mean a substantial
delay in the proceeding. It's already been nine months since the CCTA filed its application in December
19th, 2003. Now, we appreciate the tremendous volume of work this Board has taken on, or has been
directed to take on by the government, at the same time the CCTA is entitled to a reasonably expeditious
treatment of its case.

235
Every month that passes exposes the cable companies to more uncertainty, to more pressure to pay rates

higher than it believes are justified by the monopoly utilities, more uncertainty about its right to attach poles at a reasonable price. This while it is engaged in increasing competition with affiliates of the same utilities, not to mention the telephone companies. The telephone companies have no such problem, given their shared ownership of pole networks with electric utilities.

236
The Board, the CCTA, and the other parties concerned agreed at an issues conference where the parties agreed on the issues for this proceeding. We agreed to allow the EDA an extra month to prepare their evidence. It has now done so. We say there is no reason for a further delay.

237
Finally, a point from the point of view of public policy, if you like. We think these issues are all interconnected. They don't stand in isolation from one another. To us, our submission would be the Board needs to consider all of the evidence in the case, the cross-examination and the argument on all the issues to make an appropriate argument -- to make an appropriate decision on each of the issues.

238
As an example, we hear, for example, that we're seeking heavy-handed regulation. On the other hand, we're proposing a uniform rate and a formula that would support that uniform rate, and that both the formula and the level of the charge, and whether it should be a uniform charge, are all subsequent issues in this proceeding. What could be simpler from an administrative point of view than a uniform rate with a uniform formula?

239
And so when the Board decides whether it's going to regulate, it's also at the same time going to take into -- it's going to take into account how simple or difficult that regulation will be. That will be part of its decision of whether to regulate or not. And so what I'm saying is, in order to make that part of the decision, you need to have debate and discussion and a full review of the evidence on the question of what kind of regulation we're talking about. Uniform, simple formula, what is being done elsewhere, what other provinces have done, what other states have done, what the FCC has done, what the CRTC has done. How telephone attachments are treated vis-a-vis attachments to electric utilities. All of these issues come together.

240
You also need to understand the fact that we've, as I understand it, my colleagues or my clients have virtually reached agreement with the group, the Mearie group representing 55 of 96 LDCs on all aspects of the agreement, other than the charge.

241
So all of these things go into the fabric of your decision on how you're going to regulate and whether you should regulate. And so the issues are intertwined, and that's why we agreed to the issues list as it was and didn't wish to split off questions in some sort of a rigid hierarchy. We don't think there is a hierarchy of issues. We've always said that. We think all of the issues are important.

242
And I can sit here and go on about what I think is the most important issue, and my colleagues have told

you what they think the hierarchy of issues is. But I think our real submission is they're all important,
they're all intertwined. So thank you.

243
In summary, for reasons of good public policy, in recognition of the fact that this hearing is, in large part,
in our view, about how the Board should regulate rather than whether, for reasons of procedural fairness
and avoiding extreme prejudice to the CCTA, I would urge the Board to deny the motion.

244
Thank you.

245
MR. KAISER: Thank you, Mr. Brett.

246
Mr. Ruby, Ms. Friedman, Mr. Brett says that you are in agreement that this Board has jurisdiction on this
matter. Is that the case?

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MS. FRIEDMAN: That's correct.

248
MR. RUBY: Yes, Mr. Chair.

249
MR. KAISER: Mr. Dingwall, any views on that?

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MR. DINGWALL: We would support that same conclusion, sir.

251
MR. KAISER: Thank you.

252
One question, Mr. Brett. You mentioned that it is the case that this was filed back in December of last
year. How long have your people been negotiating with the LDCs on these rates and charges?

253
MR. BRETT: Well, Mr. Chairman, as I understand it, the negotiations actually started back -- as you
know, the previous agreements expired on December 31st, 1996, and so on the issue of --
there's two separate negotiations to speak of. There's the negotiation I alluded to in my
comments between the MEARIE group and the CCTA on the issue of the contract, the
model contract. Now, that negotiation has been going on for about four or five months, I
think. And our understanding is that they've reached -- the parties have reached
agreement on that agreement, except for the financial issue, the issue of the level of the
charge and the formula for the charge.

254
Now, that still represents a fairly substantial agreement, you know, accomplishment. But obviously the
key -- I think both parties view the key points as the level of the charge and the formula. And on that side,
negotiations have been going on between CCTA members, and these would be the various cable companies in the province. There's a number of them, as you know, with Rogers, Cogeco, and Shaw
being the principal ones, but there are a number of others.

255
They've been negotiating with their counterpart LDCs in one fashion or another since 1997, and

have
been able to -- unable to reach agreement. And that is why they brought the motion -- they brought the
case to the CRTC in 19 -- I guess it was decided in 1999, but it was brought in '97. So they started
negotiations in '97, negotiated throughout '97, and then brought a case to the CRTC which -- and
continued to negotiate, as I understand it, and have continued to negotiate ever since. I mean the
negotiations at the individual level have been a constant activity in the last several years, since the end of
'96. But there have been a lot of agreements reached that are of an interim nature; in other words, we will
agree to do such and so, but if and when a regulator sets the rate, it will replace what we've agreed to, and
retrospectively, to the beginning of the period. So it's sort of a kaleidoscope of discussions.

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MR. KAISER: Thank you.

257
We will hear next from the CEA. Mr. Ruby, you have a motion you filed on September 24th, requiring...

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MS. FRIEDMAN: Mr. Chair? Sorry to interrupt, Mr. Chair, I was hoping to have a chance to reply.

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MR. KAISER: Oh, I'm sorry.

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MR. LOKAN: And also, I was hoping to make a very brief submission on behalf of the Power Workers'
Union.

261
MR. KAISER: All right.

262
SUBMISSIONS BY MR. LOKAN:

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MR. LOKAN: For the Power Workers', we support the position of the EDA. We think that bifurcation
makes sense in this context, and adopt the reasons given.

264
The one additional point that I would make is that a bifurcated proceeding may provide the occasion for
more constructive negotiations. I'm thinking of what this Board recently did in the combined distribution
service area amendment proceedings where some matters of principle were settled first and, in its
decision, the Board certainly expressed a preference for negotiated outcomes that are consistent with the
public interest.

265
It may be particularly, as defined by the EDA where they say it's not just regulate or not but perhaps give,
if you are going to regulate, some indication of whether it's light or heavy, that that kind of preliminary
ruling could be what's necessary to tip the parties back into a more constructive dialogue.

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Those are my submissions.

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MR. KAISER: Thank you.

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Ms. Friedman?

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REPLY SUBMISSIONS BY MS. FRIEDMAN:

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MS. FRIEDMAN: Thank you, Mr. Chair.

271
Further to your earlier question, all parties here agree that the Board has jurisdiction; that the truth of the matter is, the Board having the power to regulate an area does not mean the Board determines it is in the public interest to actively regulate in that area.

272
So absolutely, the Board has the jurisdiction and the power to regulate pole access rates. We would submit it is incumbent on the Board to determine, first, whether it's in the public interest that it do so, and it's why we somehow have elevated issue number 1. Issue number 1 is clearly on the issues list: Should the Board regulate? And, as we say, it's not a foregone conclusion that the Board must regulate the attachment rate.

273
MR. KAISER: Is there some reason why you chose to file this motion so late? The points made by Mr. Brett that you had this issues conference and he went out and answered interrogatories that dealt with the whole list the issues, and now you bring a motion, as he says, on the eve of the settlement conference to bifurcate. Why are you so late with this motion?

274
MS. FRIEDMAN: Really, the strategic question came up when we saw the interrogatory questions, and we realized that the effort was going to be to keep -- to make the proceeding into the details of costing data. And we realized that the principle of regulatory efficiency would say, Well, let's see if we need the data first. So it was really as part of that.

275
In light of hearing Mr. Brett's submissions, I wish I hadn't waited until the day interrogatories were due to file the motion. And that was just because of the delay in obtaining instructions on it and consensus so that we can file the motion materials.

276
But it was really when we realized that principles were not being focussed upon at all by the CCTA but detailed costing data, whereas we were focussing on the principles. And so we thought some resolution had to be brought to make the proceeding simpler; otherwise, we're really speaking from two different ends of the spectrum - one from the level of principle and one from the level of detailed data.

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MR. KAISER: Thank you.

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MR. SOMMERVILLE: Ms. Friedman, isn't Mr. Brett right when he says that

your motion sort of makes
nonsense of the issues list? How do we read this issues list in the context of your
motion?

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MS. FRIEDMAN: As I said, in the EDA submission, it's completely consistent with the issues list.
Clearly, it's an issue. When we attend the issues conference, we recognize what all of the parties think are in issue in the proceeding. We know that the rate, ultimately, if the Board is going to regulate, is in issue, so we would never deny
that that belongs on the issues list.

280
But as we say, this application is not brought by the entities who are being regulated. It's not the LDCs
who are saying, You are our regulator; please regulate us on this issue. This is an outsider coming and
saying, Board, you must regulate in this area. All that we ask the Board is to consider, within the scope of
its mandate, whether it is true that it needs to regulate this area first, before, as we say, and we'll hear
more about that, detailed cost data is gathered.

281
One of the points that I need to make is, Mr. Brett, I would submit, gave some evidence about the history
of negotiations. What you will find, Mr. Chair and Members of the Board, is that the LDCs have a
completely different side of the story to tell on what has happened during the negotiations. And so to
accept Mr. Brett's submissions as evidence that, you know, negotiations have been going on but have
been impossible and so you must regulate is simply, I would submit, uncalled for.

282
I don't want to fall into the trap of giving evidence myself, but I will just say this one thing, that we do
intend to put forward a panel of LDC witnesses to speak to that; what has happened, what has happened
in negotiations, et cetera. So I urge you not to take Mr. Brett's submissions as evidence that regulation is
necessary and is a foregone conclusion.

283
Again, I feel the need just to point out a lot of talk is happening now about the Mearie group versus the
EDA, and I better point it out at the beginning. The EDA and the Mearie working group are completely
different. I was actually a little bit surprised to hear that there are 55 members in the Mearie working
group. I didn't realize it was that extensive, but I can tell you this. The Mearie working group was not
able to get sign off of every LDC in the province to become its negotiating agent to negotiate with the
CCTA. And therefore, whether it is 55 or some other number, some LDCs have agreed to coalesce in a
Mearie working group to negotiate with the CCTA.

284
And Mr. Brett, obviously, has, through his client, lots of information about that proceeding, about those
negotiations. The information that I have received is that the CCTA will not go further to negotiate rates.
In other words, it implies to me that this proceeding is strategic, in the sense that they would be able to
negotiate rates, they've been able to negotiate other things, but for this proceeding. And, therefore, I just
-- I just would like to just make sure there is not too much of a spin placed on what's been happening at

the Mearie group, because we don't have evidence as to why those negotiations have stopped at the level
of rate making or rate methodology.

285
On that same point, just to point out, the Mearie working group does not bind the EDA. The EDA, in this
proceeding, has not agreed to any terms of access. We do not have that mandate. Again, had it been a
situation where the Mearie working group was able to get sign off of every LDC in the province, then
there would be a commonality and, quite frankly, the EDA and the Mearie working group would have
somehow intervened in this proceeding together, but that's not the case.

286
Because there is not -- there was not sign off from every member, the EDA has intervened in this
proceeding to give the overall perspective of the LDCs in the province, which is to allow them to
continue to negotiate, whether individually, locally, or in the context of some groups like the Mearie
working group.

287
Thank you, Mr. Chair.

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MR. KAISER: May I just ask you, Ms. Friedman, the 55 members of this Mearie working group that
Mr. Brett referred to, are they members of the EDA as well?

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MS. FRIEDMAN: That's right.

290
MR. KAISER: And your position, or I should say, EDA's position was, you thought your members
should all do their own thing.

291
MS. FRIEDMAN: That's right.

292
MR. KAISER: But the 55 have clearly chosen otherwise.

293
MS. FRIEDMAN: No, let me explain a bit about that.

294
What the working group is, their mandate was to form a model agreement and then attempt negotiations.
No individual member of the working group is bound to that form of agreement. And, in the context of
that agreement, there are clauses to allow for individual negotiation.

295
So that is not an agreement that will cause the 55 to walk away and be bound by a form of agreement
from those negotiations. It was to form a model agreement that can give individual LDCs something to
start with, that had some basis of principle because the parties had had discussions about it, when they go
back to negotiate with their local cable company.

296
So not even any of those 55 are bound by a strict form of agreement, even if those negotiations are
completely successful. It was just to form a model to help them out.

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MR. KAISER: Leaving aside who is the bad guy and who is the good guy, do you dispute Mr. Brett's submission that these negotiations have been going on for six or seven years?

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MS. FRIEDMAN: Hard to answer that question without giving evidence, but I don't dispute that the parties have been talking for this many years. The reasons why negotiations may or may not have been fruitful -- and I would say many local negotiations have been --

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MR. KAISER: I'm not interested in argument about the reasons or who is good. But these discussions, these negotiations have been going on a long time; isn't that correct?

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MS. FRIEDMAN: That's right. Against the backdrop of the CCTA moving for regulatory intervention, which I would say colours negotiations quite a bit and makes the parties entrenched in their positions quite a bit.

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MR. RUBY: Mr. Chair, just as a point of information. Maybe I could be helpful.

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MR. KAISER: Thank you.

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MR. RUBY: I acted as counsel for the distributors who were involved at the CRTC and ultimately through to the Supreme Court of Canada, so I've been involved in this since '96 or so. It is my understanding that there was a great deal of negotiation in 1996 when the old agreement was coming to an end, very little until the Supreme Court of Canada ultimately decided the issue of CRTC jurisdiction in May, 2003, and I'm not aware of, personally, of what has happened since then.

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MR. KAISER: And I presume the fact that it went to the CRTC was indicative of the fact they couldn't come to an agreement between themselves; is that right?

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MR. RUBY: That was the position put forward by the CCTA.

306

MR. KAISER: But was that the case from the point of view of your client?

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MR. RUBY: The point of view, I think, of my client at the time was that negotiations should have continued and that that was the appropriate way to resolve things, the way it had for the 30 years previous to that.

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MR. KAISER: I see. Any other submissions from anyone else on this matter?

309

Let's proceed next then, if we can, to your motion, Mr. Ruby, that's the -- I am reminded we usually take a break at 11, so we will do that, for 15 minutes. And we will hear from you Mr. Ruby when we come back.

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MR. RUBY: Thank you, Mr. Chair.

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--- Recess taken at 11:00 a.m.

312

--- On resuming at 11:26 a.m.

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MR. KAISER: Mr. Ruby, you're to bat.

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MR. RUBY: Thank you, Mr. Chair.

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If I may, I'd like to start with adding one additional piece of information to a question I answered immediately before we took a break. Mr. Chair, you asked about if there had been any negotiations since '96 when, what I think of as, the problems started. And I can tell you, this wasn't a client I acted for at the time, but Hydro One Networks, in fact, has negotiated with the CCTA, and ultimately with its member Ontario cable television companies, an agreement, a pole attachment agreement, in 2001, which is coming due this year. So, in fact, on a utility-by-utility basis, there have been some successful -- at least one set of successful negotiations. And I understand Hydro One, in fact, has 78, I think it is -- 75, more or less, agreements in place with respect to use of its poles.

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MR. KAISER: That's Mr. O'Brien's organization, isn't it?

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MR. O'BRIEN: That's correct.

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MOTION BY THE CANADIAN ELECTRICITY ASSOCIATION RE DISCLOSURE OF INTERROGATORY RESPONSES:

319

SUBMISSIONS BY MR. RUBY:

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MR. RUBY: With respect to the CEA's motion concerning materials filed in confidence, it's my hope that this will be the simplest motion of the day to deal with; it's relatively straightforward. And it may be useful if you have the compendium that I provided to the Board, the buff-coloured book, and you turn to tab B and the six tabs behind it.

321

The essence of the CEA's motion is that two of the parties have filed data in confidence with the Board. The best that I can tell from what they've publicly provided is that it is price information, that is, the prices that cable companies in Ontario have agreed to with Ontario electricity distributors. In some cases, the indications on the public record are better than others as to what it is, but that seems to be the gist of it.

322

In light of the presumption that the Board has that all materials in a proceeding are to be filed in public, and the fact that the CCTA has not provided any evidence whatsoever that the parties to this agreement keep this data confidential, it's my submission that the data should either be withdrawn by the CCTA from the record considered by the Board, or that it should be disclosed to all of the parties.

323

So, in a nub, that's it. I've provided at tabs 5 and 6 the Board's rule, just an excerpt of the Board's rule,
dealing with motions, and then the key guidelines in dealing with the filing of confidential information.
Nothing turns in particular on this, except on one point that I would draw to the Board's attention.

324
The CEA, as is proper for these types of confidentiality motions, brought a formal motion by notice of
motion, which is what is required, under Rule 8. And then, under Rule 8.04, what is required is that a
party who wishes to respond has to file and serve, at least two days in advance, a written response, an
indication of oral evidence, or other evidence in appropriate affidavit format.

325
And what that means for this particular motion is that, when the CEA says, Well, there's no indication
here that the other parties to these agreements, that is, the LDCs, are keeping their information in
confidence, their cost -- not cost but their price information, price for access to poles, then it is up to my
friends at the CCTA to put in an affidavit and say, in fact, this isn't confidential information. And the first
indicator, and main indicator, of confidentiality is that the parties themselves, both parties, treat it as
confidential.

326
And with respect, that hasn't happened here. There have been no responding affidavit materials filed by
the CCTA. So all this Panel has before it on this motion are the bald statements made by the CCTA that
the confidentiality rules of the Board should attach to this evidence, and that's it.

327
so with respect, although I will make a number of other points, in my submission, that is sufficient for
this Board, this Panel, to dispose of the motion on the basis that the materials should either be disclosed
or withdrawn.

328
That said, it's worth looking at exactly what has been provided. And if I could ask the Panel to turn to tab
3 of my compendium. This is the answers given by the CCTA to two Board interrogatories. And in my
submission, it doesn't make a difference that it was the Board that asked for this information, the Board
Staff. If information is filed in confidence, it's impossible for the other parties to test its accuracy if they
don't know what the information is.

329
But in the first paragraph on the first page, Board Interrogatory 2, under the heading "Response," the first
paragraph is all that has been presented with respect to why the information is confidential. And the
CCTA says it is sensitive and its disclosure would cause harm. Well, there is no separate evidence of
that, but for the moment, I will let that pass.

330
But what there isn't is an indication or even a statement that the parties to the agreements, that is, the two
parties that have agreed on a price, which is what's been submitted in confidence, it appears, that both
parties have agreed that the information should be kept confidential. And to the best of the CEA's
knowledge, in Ontario, there aren't any LDCs who treat the price of pole access as

confidential
information. And if it's publicly available from one party, another party can't claimed that it's
confidential.

331
Now, the CEA's in a bit of an awkward position because, of course, it doesn't represent all 90-odd LDCs
in Ontario. We don't have access to that information. So we're put in the awkward position of having one
party say, The prices are such-and-such, without our being able to verify that information. Or in the case
of this material filed by the CCTA, we can't even figure out which LDCs they're talking about so we can
go back and ask the LDCs for the information, to the extent that they'll give it to the CEA as opposed to
any other organization.

332
So again, in summary, that's the problem with the CCTA submission. And if you look, again, two or three
pages in, at Board Interrogatory No. 6, you, again, got the same type of paragraph, the first paragraph
under the heading "Response," which merely says that it's sensitive and its disclosure would cause
specific harm. But, again, no allegation that the parties have treated this confidentially.

333
And the reason that I drive this home is because, if the Board can turn to tab 2, which is the cover letter
that Mr. Brett filed with the Board covering the CCTA's interrogatory responses, the reason he gives for
filing it in confidence is a record type number 5, which is the record that -- I'm sorry to ask you to do a
little bit of flipping here. But if you turn to the last tab in the book, tab 6, I've excerpted the section of the
guideline on confidentiality. And at page 14, you have the record types. And the Board will be aware, of
course, that the way it typically treats confidentiality is if you come within one of these five or six record
types, you have almost a presumption that the information is confidential. And if it doesn't, then you have
to make an argument on some other basis.

334
But what the CCTA has pointed to is record type number 5, that is, section 17 of the Freedom of
Information and Privacy and Protection Act. Now, that provision does deal with third-party information.
But the key aspect of it, or the first -- getting to first base means that you have to -- it has to be
confidential information. Yes, you have to have information that's sensitive and can cause commercial
harm. Those are aspects of section 17. But parties don't get to treat information that isn't treated as
confidentially, generally, as confidential for the purpose of a regulatory proceeding.

335
Now, again, I don't want to dwell on this, but MTS Allstream, and its interrogatory response that we're
seeking an answer to is at tab 4 of the compendium that's before you.

336
MR. SOMMERVILLE: Mr. Ruby, just before you proceed. It doesn't strike me as counter-intuitive that a
specific contractual arrangement between parties has some spaces of
confidentiality interest attached to it. And that's really what we're talking about
here, isn't it? Specific contracts, between CCTA members in one case and some
other information in other cases, related to a specific contractual

arrangement
that has obvious commercial implications for others who may be negotiating like
contracts. Isn't that normally the kind of thing that one would see as being --
having commercial sensitivity?

337
MR. RUBY: It may have commercial sensitivity, without being confidential. Parties can and have, in
other provinces, explicitly agreed in their pole-attachment agreements, that the prices, for
example, will remain confidential.

338
You have an example of that on the record of this proceeding in the case of Hydro Quebec. This Board
has before it the Hydro Quebec standard agreement with cable licensees, and it explicitly provides that
certain aspects of that agreement, one of which is the price, will remain confidential; that is, the parties
have decided to treat their information as confidential.

339
But without any other -- any indication and it may be -- it doesn't have to be in the agreement. It could be
a letter. It could be that the parties -- the CCTA could have produced an affidavit from the LDCs saying:
Yes, we don't have a confidentiality agreement or provision, but we treat this information as confidential.
We don't show it to anybody else. Nobody gets to see it. We've never produced it to the Board in any
other form. It hasn't formed part of a regulatory filing. We haven't answered an interrogatory in public
that makes this information publicly available.

340
The CCTA could have put in evidence, in the right circumstance, if the facts were such, saying: This
information is treated as confidential. And if it was important to the CEA to maintain confidentiality and
not rely on the practice, if I can put it that way, of the LDCs, then it could have insisted on a
confidentiality provision.

341
MR. SOMMERVILLE: I'm a little puzzled. As I understood your submissions with respect to cost
eligibility, you suggested that the interest of your association was in the general
issues and not with respect to the specific arrangements that arise or may arise
between, for example, cable operators and specific utilities. That was not the tier
of interest that your association had. You were interested in the broad range of
things.

342
And in this argument, I see an interest that is really driving very deep into the very specific arrangements
between these parties. And -- well it's as simple as that. That puzzles me.

343
MR. RUBY: I appreciate that. Maybe I could answer it this way. This is why the CEA would like to
get this information.

344
This morning, for example, you've heard comparisons drawn between rates across Canada. Mr. Brett

alluded to what the rate was and had been set in Nova Scotia. That is one argument that apparently may
be made to the Board is that it should have comfort, in a CRTC-type of ultimate rate, leaving aside the
formula, because $15, for example, to pick a number, is roughly what everybody is charging in Canada.
So that the Board can take comfort in an Ontario $15 regulated rate.

345
What that involves then is comparing rates across Canada. Now, the CEA has information about what's
going on outside Ontario and with respect to -- not universally, but does have some information, and with
respect to its own members in Ontario. But if a comparison is going to be drawn, as apparently it's going
to be, across the spectrum, then the CEA should be entitled to have that information and make sure that
the rates that are being compared are apples and oranges.

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MR. SOMMERVILLE: But why disaggregate? Why do you need it to be disaggregated?

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MR. RUBY: So that you can make sure that all of the rates are being charged for the same thing.

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MR. SOMMERVILLE: That's your interest?

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MR. RUBY: The interest is to make sure that the apples and oranges -- whatever the numbers are, they
are. But, for example, some utilities roll into their annual rate a charge for what's been
variously called tree-trimming, vegetation management, that is clearing brush and trees
from around the wires that are on poles. Some utilities wrap that into the annual charge
and, for some, it's an extra charge. You pay fifteen dollars, for example, plus another two
or three dollars for that.

350
That's the kind of information that could be important to the Board in comparing the apples and oranges.
Now, it may be at the end of the day that we're satisfied with what the CCTA produced, but we can't tell
if we don't get to see the data.

351
MR. SOMMERVILLE: That's certainly helpful.

352
MR. KAISER: Mr. Ruby, I have a question. You're cooperating with Ms. Friedman's client, calling
evidence. Why don't you just ask the EDA for this data?

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MR. RUBY: Well, I'm not sure at the moment the EDA has the data, and we have been cooperating
closely with the EDA.

354
MR. KAISER: Why wouldn't they have the data from their own members?

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MR. RUBY: Well, they might be able to get it. I don't know. I don't have access to their members. But
at the moment, what has happened is there is a party to the proceeding, in fact, the
proponent, that in the context of the interrogatory process gives the Board

information
that it doesn't disclose to the other parties. And the Board's own basic rule on confidentiality is that Board proceedings are open and information is not to be kept confidential unless there is a reason to do so. And one of the reasons to keep information
off the public record is because the parties have treated it confidentially.

356
MR. KAISER: And we're not disputing that. What you say is perfectly right. I'm interested in more of a
practical approach. You've got two associations, some overlap in membership, you're
national, they're provincial, I guess, cooperating on the evidence. They must have the
data. Did you not ask them?

357
MR. RUBY: Well, part of the problem is that even if we got the data from the EDA, there would be no
guarantee that it matched exactly what the CCTA had put in front of the Board. What our
motion is, is to get to see what the CCTA has given the Board. Asking the same question
of the EDA or its members wouldn't necessarily get you exactly the same answer. In an
ideal world, you would like to think it would, but particularly in the context of a proceeding that's moving along at a fair clip, excuse me, with only a couple of weeks that
have passed since the interrogatory responses and then the reply evidence has been filed,
the -- in my submission, the proper regulatory approach is to have the party that produced the information to the Board to provide it.

358
Now, it's also maybe of interest that that is the reason why I say that an alternative to disclosure is the
CCTA withdrawing the evidence. And I would be quite content with that. If the CCTA can't or won't put
forward the evidence but doesn't want the information disclosed, then it shouldn't put it in front of the
Board. It can't use what it doesn't have, and I'm in the same position.

359
MR. KAISER: All right. Did I understand you to say, however, that at least according to your
knowledge, the members of the EDA do not treat these prices as being confidential?

360
MR. RUBY: That's right. To my knowledge, and I can only speak to the members that are CEA
members that are participating in this process.

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MR. KAISER: And which seven are those, by the way?

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MR. RUBY: They're listed. They're actually in the compendium.

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MR. KAISER: All right. What tab?

364
MR. RUBY: Tab 3.

365
MR. KAISER: Tab 3, thank you.

366
MR. RUBY: You will see there, they're listed by province, and then you can look at the list for

Ontario.

367

MR. KAISER: Are those your submissions?

368

MR. RUBY: If I may, the only other brief submission is to just point out a slight difference with the Allstream evidence.

369

The Allstream answer to the interrogatory we're raising is at tab 4, B4, of the compendium. And if you turn to the second page. I only have the abridged version. The Board, obviously, would have the unabridged version.

370

In my view, this does one step better than the CCTA at least, because at least it tells us a little bit about the information that's being disclosed.

371

The CEA -- I'm guessing that it's price information. It looks like price information, but who knows what it really is.

372

MTS has, in my submission, done a better job, but we're still in a position where you have information that's being provided to the Board that we don't get and, therefore, if it became appropriate, couldn't cross-examine upon, for example.

373

So not to put too fine a point on it, with respect to the MTS evidence, all we're looking for is the information that's marked by a number sign in the second column.

374

MR. KAISER: One of the assertions, I believe, is that your members - and it may be Ms. Friedman's members - have affiliates that compete with the telecoms; is that the case?

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MR. RUBY: That's an assertion. It's certainly an allegation that's been made in that proceeding, and there's quite a --

376

MR. KAISER: Is it accurate, or not?

377

MR. RUBY: The evidence that's on the record, I think, to fairly characterize it, and Mr. Brett will, of course, correct me if I get this wrong, is that certainly the CEA's evidence was, and is, that there is very little competition with cable companies in the telecommunications market with respect to affiliates. Some CEA members - and it's not just in Ontario, it's across the country - either through affiliates or directly in provinces that allow for it to happen, have ventures, if I could put it that way, that provide telecommunications services to the public for compensation.

378

The telecommunications services vary quite a lot, but the evidence is that if they compete with what the cable companies do, it's on a very, very minor basis.

379

MR. KAISER: The reason I ask it is, unfortunately, MTS is not here and the lawyer for Videotron-Quebecor is not here. I'm just talking about telecoms now. The cable boys can take care of themselves. But you're telling me that some of your clients do have affiliates that provide telecom services?

380
MR. RUBY: They do. And some of those services are in competition with companies like Group Telecom and MTS Allstream. And, in fact, in the case of MTS Allstream, MTS Allstream in Manitoba, in fact, is the incumbent telephone company. So just about anything you do in the telecom business would compete with them.

381
MR. KAISER: Thank you.

382
MR. RUBY: Those are my submissions.

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MR. KAISER: Thank you, Mr. Ruby.

384
Ms. Friedman, do you have a position on this motion?

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MS. FRIEDMAN: No, the EDA doesn't take any position on this motion.

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MR. KAISER: Before I turn to Mr. Brett, does anyone else have a position on this motion?

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Mr. Dingwall?

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SUBMISSIONS BY MR. DINGWALL:

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MR. DINGWALL: Very briefly, sir.

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Energy Probe's view is that, in the event the information is of value to the world at large, some degree of sensitivity might be undertaken with respect to its distribution, and I will leave Mr. Brett to speak to the degree of sensitivity.

391
But from our position, we're seeing that the outcome of this process could be a uniform rate, or it might not be. And if it's not, is there a potential that harm could arise to the individual service agreements that are in place? Yes, because if there's some indication as to who's the lowest and who's the highest, then that might impact where negotiations go in the future.

392
If we're working on the premise that a standard agreement does not emerge from this, there is some potential that the existing agreements would have to continue. So we do see, and have some understanding for the suggestion of sensitivity.

393
With respect to process, it's conceivable that, for the purpose of completing this hearing, sensitivity might be addressed through some form of written undertaking, as has been used on the gas side, which enables counsel or principal clients to gain access to the confidential information to the degree it's

necessary to
participate in the hearing. And, from our perspective, we don't see a need, from our position, to have that
information at this point in time.

394
MR. KAISER: I want to thank you for reminding me of that.

395
Mr. Ruby, would you be satisfied if the information was provided to you, as counsel providing an
undertaking to the Board, that you would keep this information confident? Would that meet your requirement?

396
MR. RUBY: It would, to a point. And I would be in the usual situation, in that case, of having the
necessity, perhaps, to reapproach the Board if, in my view, I needed the assistance of my
client to deal with the information. And in that case, it may be that I only need to disclose it, for example, to the Ontario members of the CEA. There may be a way to narrowly craft an order in that respect.

397
MR. KAISER: Mr. Brett, do you have a problem with that?

398
MR. BRETT: I have a problem, I think, Mr. Chairman, with the last sentence, about disclosing it to the
Ontario members of the CCTA. That's exactly what we're concerned about. Sorry, the
Ontario members of the CEA. Because they are also five of the -- or seven of the
distributors with whom we have been or may be negotiating in the event, or at least until
such time as there is a uniform rate, or in the event that there isn't one.

399
I have no problem with the idea of Mr. Ruby having the information on a confidential basis to him, if that
helps him in his understanding of -- we've done this in the gas -- as you know, in the gas area on
occasion. But I would have a problem with disclosure if he intends to use this as the first step, you know,
to -- if he really thinks he'd like to talk to his clients about it, I have a problem there.

400
MR. KAISER: Well, he said he'd approach the Board before taking such further steps.

401
MR. RUBY: I would undertake to do it. But I do have another suggestion, Mr. Chair, that may solve
the problem.

402
The CCTA, you'll recall, or MTS for that matter, didn't put forward this information. This information
was provided in answer to Board Staff interrogatories. I have to admit, I don't quite see the relevance of
the information in the first place, that is, what the current prices are, if that is what's been disclosed. I
obviously don't know. But it may be that if the Board determines that it doesn't need the information,
despite the Board Staff asking for it in trying to provide a fulsome record, the CCTA didn't put it forward
so apparently it didn't think it was important for the Board to have that information in the first place.

403
MR. KAISER: You've lost me. What's your submission?

404
MR. RUBY: My submission is, maybe the Board Staff would withdraw the request, or we'd just strike the whole interrogatory off the record.

405
MR. KAISER: Well, it could be --

406
MR. RUBY: I don't know if that is acceptable.

407
MR. KAISER: The Board Staff has withdrawn the request, but you haven't withdrawn -- this is your motion.

408
MR. RUBY: Sorry, I didn't understand, and it may be that it's completely my misunderstanding. But I understood that material had been filed in answer to a Board interrogatory that is currently on the record and will be considered by the Panel in the course of the hearing. If that's no longer the case, that would solve the problem, certainly.

409
MR. BRETT: Maybe I could help a little bit.

410
MR. KAISER: Yes, sir, go ahead.

411
SUBMISSIONS BY MR. BRETT:

412
MR. BRETT: Mr. Chairman, Panel, maybe just to help the Board. It is the case that the CCTA, in responding to the Board IRs No. 2 and No. 6, did file -- we filed two things. We filed an abridged -- well, first of all, we filed four pieces of paper, four separate sheets, which outlined on them the responses that the Board Staff -- the questions the Board Staff had with respect to the price in the existing agreements; whether the agreements were interim or final, "interim" meaning an agreement that was -- in which the price would change if the regulator set a price. The price would default to the regulator's price. And then also the status of the discussions with each of the LDCs.

413
Those were -- I think number 2 asked for the status -- number 2 of -- question number 2 of the Board said: "Please indicate whether there is currently a pole attachment agreement, the state of negotiations if there is no agreement in place, and, if applicable, whether the distributor has taken any steps to inhibit/block the use of its poles." And a question about whether they're uniform. "What agreements are in place? Please indicate whether the agreements in place are standardized for each CCTA member." And then in 6, they had asked -- basically, they asked, Board Staff Interrogatory No. 6: "What are the current annual charges per pole being charged to each CCTA member accompanied by each Ontario electricity distributor. Do CCTA members consider them to be unreasonable, and so on?

414
So what we did, the only part of these answers that were in confidence, we filed in confidence, were the

four sheets where we listed the actual price for each existing agreement and the status of the negotiation.
We then prepared an abridged, a summary version of that -- as you know, a summary version or an
abridged version of that aspect of each response.

415
For example, Board Staff interrogatory 6, on page 1 of our response, we provided the ranges. In
paragraph 2, we say: "Generally, however, rates vary between $15.89 and $20 per pole where there is a
final agreement in place, and between $10.44 and .31 per pole in the case of an interim agreement." We
then defined what is an interim agreement.

416
We then went on to say: "In the large majority of cases, there is no current agreement in place. In many
instances, electric distributors are charging 15.89 per pole, per year," which was the CRTC rate,
"pursuant to a month-to-month extension of the expired 1997 MEA agreement, pending the outcome of
this proceeding."

417
So that is the aggregation that we provided. And then we provided answers to the rest of the questions in
each case.

418
So the only thing that is confidential are those four sheets. So if that is of any help. We haven't heard
anything on that from Board Staff or anybody else. I mean, the filing is still there. And it has been filed,
as you know -- as a preliminary matter. It has been filed in the Board's confidential file, the four sheets
have.

419
MR. KAISER: Mr. Ruby, coming back to Mr. Sommerville's question. Looking at this response which
Mr. Brett has just referred to, this is the first two paragraphs of interrogatory 6, Board
interrogatory 6. Do you have that?

420
REPLY SUBMISSIONS BY MR. RUBY:

421
MR. RUBY: Yes.

422
MR. KAISER: It's your tab 3. Now, why isn't that satisfactory for your purposes? What more
information do you need than that?

423
MR. RUBY: Well, for example -- just to take the simplest example, is I have no way of verifying
whether it is correct.

424
MR. KAISER: So you're not content when Mr. Brett says the range is between 15.89 and $20, where
there is a final agreement in place. You want to be able to check that?

425
MR. RUBY: Yes. And part of my problem, of course, is the CCTA hasn't put it forward, the Board
Staff has asked for it. And I don't know what use it's going to be made -- what use is

going to be made of it.

426

So --

427

MR. KAISER: Well, it's an interrogatory response. It is in the record now; right?

428

MR. RUBY: Well, that information is, but not, for example, which utility is which, and if the Board, for example, doesn't accept EDA's bifurcation motion, one of the things that Mr. Brett has asked for is for the Board to set the level of the charge.

429

MR. KAISER: Yes.

430

MR. RUBY: One issue that may go into setting that level, the CEA would submit that it's not an appropriate element but it may be considered by the Board, is where are we now? For example, do we want to be quadrupling the charge? Maybe that is a factor. Maybe there should be a phase in. I mean, there are all kinds of different implementation issues that the Board may consider important. I don't know. I don't think they're important, but the Board may consider, knowing where we are with respect to each utility, if the Board doesn't set a uniform rate, we may get there.

431

MR. KAISER: Those will all be issues, of course, when we commence the substantive part of this and I think we all understand that. Are you content to -- if you want to have this information in order to check the veracity of this response and others like it, are you content that it be provided to you, as counsel, in confidence?

432

MR. BRETT: The problem is I don't have any way of checking it then.

433

MR. KAISER: Why don't you have -- I mean, he's going to provide you the background data that enabled him to calculate and make this response. Why can't you check it?

434

MR. RUBY: Well --

435

MR. KAISER: Why can't you check the range? We'll give you the details of each of the companies that fall within that range and you'll be able to determine whether he has accurately stated the range as between 15.89 and $20.

436

MR. RUBY: Yes. I might be able to check that. What I wouldn't be able to check, for example, is whether there is one at the low end and 90 utilities at the high end, or vice versa, or where they fall individually. And again, if the Board decides to set individual charges for utilities, that may become important.

437

MR. KAISER: But if he gives you the detail for each of the utilities, as counsel in confidence, can't you

check that?

438

MR. RUBY: I can only check it against information that's provided by others. So if I can get the information, for example, from the EDA's members, yes, I can compare them.

439

MR. KAISER: But he's making a response. This is a response by the CCTA. He doesn't have access to EDA data, he has access to his members' data. You want to check, you've told us, that this is an accurate response.

440

MR. RUBY: What I want to check is that -- not just that the summary is accurate --

441

MR. KAISER: Yes.

442

MR. RUBY: -- but that the data he's providing to the Board in confidence reflects reality, and ultimately the use that could be made of this is on cross-examination. If it turns out that there is reason to be suspect of the information that's been provided, as I say, I'm quite content as counsel to look at it first, and if there is a problem, come back to the Board. And for example, say I'm going to need a cross-examine on this, I need the Board's leave because it is still being held confidential. Or I need to consult my client. It's hard to speculate what the data is going to show.

443

MR. KAISER: I understand, but you're not expecting Mr. Brett to give you EDA data.

444

MR. RUBY: No.

445

MR. KAISER: He's going to give you CCTA data and you're going to check it. You're now going to go get EDA data and make sure that his data is accurate.

446

MR. RUBY: To the extent I can.

447

MR. KAISER: Right. And if you had to cross-examine a CCTA witness on this, we could do that in camera. Would that be satisfactory?

448

MR. RUBY: It would be satisfactory to me. I don't know how the other parties would feel.

449

MR. KAISER: Well, we'll find out what they think about it in a minute, but that is acceptable to you?

450

MR. RUBY: Yes.

451

MR. KAISER: Mr. Brett, any response to that?

452

MR. BRETT: I think on the basis that you've laid it out, Mr. Chairman and

Panel, yes, we could do
that, to Mr. Ruby in confidence.

453
MR. KAISER: Thank you.

454
MR. BRETT: As counsel.

455
MR. KAISER: All right. Let's move on to the next one.

456
MOTION BY THE CANADIAN CABLE
TELEVISION ASSOCIATION FOR AN ORDER
DIRECTING EDA TO RESPOND TO THE
CANADIAN CABLE TELEVISION
ASSOCIATION'S INTERROGATORY NO. 4(A) TO
(G) AND INTERROGATORY NO. 6(A) TO (G):

457
MR. KAISER: This is the CCTA motion of September 28th.

458
Mr. Brett?

459
SUBMISSIONS BY MR. BRETT:

460
MR. BRETT: Thank you very much, Mr. Chairman and Panel.

461
Just by way of introduction, we really -- the reason we would like this information is that, in general, the
reason we would like this information is to demonstrate that the uniform pole rental rate that we're
proposing in the case is a reasonable rate, is a reasonable proxy for a calculated average pole rental rate
for the Ontario utilities. We believe that the EDA members, the utilities, have virtually all of the
information that we've requested and that, given the EDA's statements about the fact that they represent
the utilities in this proceeding and the fact that the individual utilities are not actively participating in the
proceeding, that as a practical matter the EDA has some obligation to collect the requested information
from its members, and the utilities have some obligation to provide it.

462
So I would like to just go through question by question, if I may. The responses that we're -- we're
looking for further and fuller responses to our number 4 and number 6.

463
If you look at our motion on the first pages 1 and 2, question number 4, our question number 4 to the
EDA is:

464
"For each member of the EDA that owns power poles, please provide the following information for each
of the years 2001, 2002, 2003: The number of distribution poles owned, either solely or jointly with
another party; the number of distribution poles with cable television attachments; the number of
distribution poles with communications attachments, other than cable television attachments; annual
revenues from cable television pole attachment fees; total annual revenues from all attachment

fees;
annual revenues from electricity distribution; and, annual revenues from electricity distribution and
sales."

465
Now, first of all, the last two, (f) and (g), we agree on -- that that information is available in the Board
records and we've obtained information on (f) and (g). It's not entirely clear that -- in some cases, the
public information that's filed does include -- does break down total revenues from sales -- from sales and
service. In some cases, it doesn't.

466
Our understanding is that under GAAP, the utilities that must file their annual statements, their annual
statements, year-end statements, don't have to make that breakdown, but good accounting practice would
suggest that they do. Some have and some haven't. In any event, we will rest with what we have, what
we've got from the public record on -- for items (f) and (g). So those fall away.

467
If I may turn to (a) for a moment, question 4(a). We believe that the number of poles -- the information
with respect to the number of distribution poles owned is available. We note that the CEA has already
provided this information for its Ontario members, its seven Ontario members, and so we think this
information is readily available.

468
With respect to questions 4(b) and (c), if you go over to page 4 of our motion, again, we believe the EDA
members have this information. We note, again, that the CEA has provided this information for Hydro
One and Hamilton Hydro, which are two of its six Ontario members. And the same is true for 4(c), which
is the non-cable telecommunications -- numbers of poles with non-cable telecommunications attachments.

469
With respect to (d), annual revenues from cable television pole attachment fees, we believe that the
utilities are required to keep this information by the uniform statement of accounts approved by the
Board. Account 4210, revenue from electricity property, they've been required to keep that since January
1 of 2000.

470
Now, we would assume, and it is an assumption, that for internal management purposes, the utilities
would separate out these various sources of property revenues, so they would separate out pole rental
revenues from other property rental revenues. They're not required to do that specifically by the uniform
statement of accounts, although it suggests that they disaggregate the revenues from the various sources
and -- but there is a specific account for revenues from electricity property.

471
And then I would use the same approach as I did in (d) above. And then (f) and (g), as I've said, we've got
that information, so we don't have to ask for it.

472
With respect to question number 6, our question number 6 was, the CRTC would note -- I'm sorry:

473
"The CCTA would note that it based its evidence on all available cost data as placed before the CRTC by
the LDCs in the proceeding leading to telecom decision 9913."

474
This is at the bottom of page 2 of our motion.

475
"And would further note that it has no way to obtain such data other than by asking for it to be filed in
this proceeding. Therefore, for each LDC, please provide the following cost data: (a) the average
embedded cost per joint-use pole; (b) the average net-embedded cost per joint-use pole defined as the
historical cost less accumulated depreciation; (c) the average pole attachment administration cost per
joint-use pole; (d) the average cost due to loss in productivity resulting from communications
attachments, that is, productivity of the LDC resulting from communications attachment per joint-use
pole; (e) the average annual depreciation charge per joint-use pole; (f) the average pole maintenance
expense; and (g) the weighted average cost of capital."

476
Now, with respect to (a), the answer we received was:

477
"The EDA does not have the information requested, nor does it believe that all" -- my emphasis -- "all of
the requested information is available from all LDCs. In addition, please see EDA's motion."

478
First of all, just to repeat, we think that the EDA -- we understand the EDA doesn't have, in its own files,
this information, and we can accept that. But we do think that they have an obligation to ascertain, from
its members if they have it, and if they have, or part of it, to collect it and file it in this proceeding.

479
With respect to 4(a), we -- sorry, I'm -- I need to take you over to page 4 -- to page 5, point number 7 on
page 5, CCTA questions 6(a) and (b) and (e).

480
With respect to 6(a), this is the embedded cost per pole, and (b) is the net-embedded cost per pole, we
believe that the EDA members have the requested information. The embedded cost per pole and
net-embedded cost per pole is information that the utilities are required to keep, again, by the Board's
uniform statement of accounts in account 1830 for the original cost for distribution poles and related
fixtures.

481
Now, we understand this account also records some assets that are not part of the pole cost, but the bulk
of the assets in this account do represent the cost of poles. And we understand that there are, and I won't
get into the details now, but we understand that there are mechanisms that other regulators have used
with respect to this -- similar accounts to this, to say -- to effectively subtract out the part of the account
that is not part of the net-embedded pole cost.

482
This account contains a bit more than the net-embedded pole cost, but it's the closest that we're going to
get to that. And we accept the fact that there needs to be some adjustment to the numbers that come out

of there, but we also put to you that other regulators in other places have been making this kind of
adjustment for some time.

483
Account 5705 is for amortization, with separate records required in respect of pole assets, in our reading
of the procedures handbook.

484
Furthermore, the Board's electricity reporting and record-keeping requirements, the triple R, requires the
utilities licensed by the OEB to submit a trial balance in the USOA format by April 30th of each year,
which reconcile to the audited financial statements which are due at the end of December.

485
Now, then, with respect to 6(c), question 6(c), which is the average pole administration cost, we think the
utilities would likely have this information because, as a matter of good management practice, they
would wish to record separately the incremental costs incurred in administering the telecom attachment
approval process.

486
The same with (d). We think that utilities would likely have information because, as a matter of good
management, they would want to record their lost productivity cost because their employees have to work
around the communications companies' attachments.

487
Moreover, as some of you may recall if you've looked at the CRTC decision, the MEA, the predecessor
to the EDA, produced an annual estimate of lost productivity cost of $3.15 before the CRTC in 1999
which the CRTC accepted and used to establish the lost productivity expense for that case. And they also
produced, the MEA, that is, produced -- this wasn't Milton Hydro or a single company. The MEA
produced, from their analysis, an administration cost, an incremental administration cost, how much
more they had to pay an admin cost because of the presence of the communications attachments, and that
was 62 cents.

488
So based on that, we feel that information must be there. It was there for the MEA to make a submission
in 1999 to the CRTC as to what they thought was an appropriate number.

489
And then, finally, the last question, (f) -- well, 6(g), I think, is -- 6(g), I think, is pretty well
self-explanatory. The utilities do know their allowed return on equity and their weighted average cost of
capital.

490
But 6(f), again, we believe that the information for pole maintenance expense per joint-use pole, which is
part of calculating, effectively, the carrying cost of the pole, is available in account 5120. It's at least a
component of that account which must be maintained and we think that, therefore, they would be able to
provide at least some enlightenment on that.

491
I guess a general point here. These things tend to be a bit messy. We're not saying that that information is
going to precisely give us a magic answer to exactly what this rate rental charge should be,

but we are
saying that it will throw more light on the situation. It will help the Board arrive at a reasonable
conclusion and, therefore, it's better to have it, even in its imperfections, than not to have it at all.

492
We think it is there for the most part. And perhaps not every single bit of it is there in every single utility.
We accept the fact that the utilities probably have different levels of sophistication in their tracking. I
mean, they've only been asked to use the USOA since January 1st of 2000. But we think, for a lot of
them, they would have a lot of this information, and we would like to get what is there. What is not there,
we obviously can't get.

493
So those are my submissions, Mr. Chairman and Panel.

494
MR. KAISER: Before I turn to the EDA, any other parties have a position on this? Mr. Dingwall.

495
SUBMISSIONS BY MR. DINGWALL:

496
MR. DINGWALL: Very briefly, sir. Energy Probe agrees with the submissions made by the CCTA
in respect to this motion. It sounds, to a certain degree, like we're dealing with
two categories of information. The first category being information that's already
confirmed to be in existence and which has been produced elsewhere by a
predecessor organization, and that category of information appears to be quite
clear, that there isn't much of a burden to produce it. It does exist.

497
With respect to the second category of information, that would be what one should do in response to an
interrogatory. Make reasonable efforts to determine what information you have and to respond by the
provision of that information or the detailing of what information might be available with a view to
entering into further discussions as to what can be produced and what quality it might be. I think that is a
necessary part of answering any interrogatory, and I agree with Mr. Brett that that effort should be
undertaken.

498
And while the response may have some degree of qualification to it, depending on availability and
consistency, certainly that information would provide significant benefit to the record and is quite
necessary in the determination of what a just and reasonable rate would be.

499
MR. KAISER: Anyone else have any comments?

500
SUBMISSIONS BY MR. RUBY:

501
MR. RUBY: Mr. Chair, the CEA takes no position on the motion, but it may be useful to raise two
matters, just that Mr. Brett addressed.

502
One is, the CEA was asked only some of the questions that are at issue in this motion and

answered some
of them in great detail. And Mr. Brett has said, Well, if the CEA could do it, why can't the EDA in the
time frame? I would just like to point out that what happened is that the CEA has been trying to gather
some of the data that it turns out Mr. Brett wanted for months. So it didn't take two weeks for the CEA to
pull it together, it took many months to get the data that Mr. Brett has been looking for, at least on the
CEA's part.

503
The second issue is, again, just an informational one. Although the MEA in the proceeding that ultimately ended up at the Supreme Court of Canada was the named party -- not named party, but the
front man, if you will, at the CRTC level, that was actually a proceeding against 32 particular utilities. At
the time there were over 300 municipal utilities in Ontario, so we're talking about, roughly, 10 percent of
them. So the exercise in gathering data was a different one than I suspect the EDA faces today.

504
MR. KAISER: Thank you.

505
Ms. Friedman?

506
SUBMISSIONS BY MS. FRIEDMAN:

507
MS. FRIEDMAN: Thank you, Mr. Chair.

508
In order to respond to Mr. Brett's positions on the question-by-question basis, I would ask you to turn to
the responding affidavit of Mr. Robert Mace which I filed in this proceeding. Mr. Mace is the -- one of
the current vice-chairs of the EDA and the chief executive officer of Thunder Bay Hydro.

509
What we put forward in this affidavit is the question-by-question analysis and tried to explain to the
Board why it's not a simple matter for a given LDC to provide the information.

510
I should just start by distinguishing between two things. I thank my friend, Mr. Brett, for acknowledging
it. The EDA often asks for information, often does not receive what it asks for, precisely because
members are concerned of what use will be made of it. We did, however, make reasonable inquiries to
get a handle on what's out there, and why our members, in response to our questions, do you have -- for
example, do you have embedded cost of pole data? They say, well, what do you mean by that? What
should we be providing?

511
And that's what we attempted to explain in the affidavit of Mr. Mace, who sets out on a question-by-question basis the difficulty of answering a given question. That, as I said, is a separate
question from what our members will provide to us without Board direction, to provide information.

512
So as I've also tried to point out, the EDA is happy to ask any question to obtain information. Whether or
not we will receive anything is anybody's guess. As I've put forward elsewhere, in materials, in respect of

the Board Staff interrogatories -- which I understand has been withdrawn -- oftentimes we are able to get
data if we say it will be held in confidence and specifically not filed in a proceeding, which again
presents some difficulty.

513
With those initial comments, I would like to start, if I may, with question number 6, Interrogatory No. 6,
which is all the costing data that the CCTA hopes to get from my client. That starts on page 4 of Mr.
Mace's affidavit, where I excerpt Interrogatory No. 6, which Mr. Brett carefully went through, of all of
the data that they're looking for.

514
We will start off with 6(g). Admittedly, the LDCs can, if they were so inclined to, give us their weighted
average cost of capital. So, in fairness to my friend, I ought to, in response to that interrogatory, have
said, while the EDA does not have the whack, our members must have it, although they haven't provided
it to us.

515
With respect to 6(a) through (f), Mr. Mace explains the difficulty with answering each of the questions.
6(a) and (b) ask for average embedded costs and average net-embedded costs. And Mr. Mace explains --
really encapsulates what our members told us when we went to them and asked them. How do we give
you this information? We recognize there are accounts that must have this data within them, but without
getting specific accounting advice, we can't tell you what -- or statistical advice, evidence, we can't tell
you what portions of these account numbers are relevant to the inquiry.

516
So, for example, account number 1830, deals with poles and fixtures and that deals with assets,
distribution assets in addition to poles. Now, Mr. Brett says there is some -- the majority of that account
is for poles. Well, the LDCs don't know that and they don't want to accept that without either an expert or
the Board telling them that. So in fairness to the LDCs, they weren't asked to provide the contents of
particular account numbers. They were asked to come up with an embedded cost number or a
net-embedded cost number, and they simply did not -- do not know what methodology or assumptions to
use and did not take it upon themselves to go seek expert or accounting advice as to how they do it.

517
So, that's with respect to question 6(a) and (b).

518
With respect to 6(c) and (d), Mr. Brett suggests that as a matter of good management practice,
incremental costs of administering attachments and incremental costs in respect of lost productivity
would be maintained by the LDCs. Well, that may be true, but the reality is, the LDCs do not track those
costs. They have never been required to do that by their regulator and they don't do it.

519
So while we may be able to come up with appropriate numbers for use by the Board, if the Board wanted
that data by use of expert or statistical evidence or analysis of the accounts that the LDCs do maintain,
that's not data that is readily accessible to the LDCs. And when we asked them for it, they just look at us
with a question mark.

520
6(e) asks about the average annual depreciation per joint-use pole. First point to make: Any information about poles in LDCs' records do not distinguish between a single-use pole and a joint-use pole. So that was the first question we always got when we asked about joint-use pole data.

521
Secondly, there is no depreciation account for poles. There is an overall depreciation account for distribution assets. And, again, the LDCs weren't asked to advise, Well, what number is in that account; and they don't know how to divide up that account to assist in order to come up with an average annual depreciation charge per joint-use pole, even if he they could come up with it for a pole, which they say they cannot, without specific guidance as to what they should do.

522
Question (f), which asks about pole maintenance expenses, again, Mr. Brett suggests in his motion that there is one account, 5120, that can help in this regard. And that's an account which deals with maintenance of poles, towers and fixtures. And in fairness, he does acknowledge that account deals with maintenance expenses for more than just poles. The first problem is the LDCs don't know what to do there. They have no expert or Board guidance as to how they divide it.

523
But to continue, they also say they don't only record their maintenance expenses for poles in that account; there are several different accounts that their maintenance costs might make their way into, and without retaining their accountant to help them with that question, can't give us that data.

524
On page 7 of Mr. Mace's affidavit, he goes through the other accounts, 5135, which deals with -- which is actually a balance sheet account dealing with overhead distribution lines and feeders maintenance and rights of way, which often contain that sort of data. And he goes through some other accounts.

525
So if we were dealing with a question -- this is on the actual accessibility to our members, if the question was, Tell us what's in account 5120, I suspect that the LDC could do that. But when you're dealing with defined terminology, which they say deals with accounting terms and bookkeeping in which there is much discretion, it becomes very difficult to come up with the answers to the interrogatories.

526
So that deals -- that deals with question number 6 on a question-by-question basis. I'd like to quickly go through 4, and then just summarize the main principles upon which the EDA has acted when it responded to the interrogatory.

527
Question number 4 asks about pole data and revenue from attachments. Mr. Mace deals with this, starting on page 2 of the affidavit. And quite frankly, one would expect 4(a) to be a trivial answer for our members: How many distribution poles do you have? Unfortunately, they tell us that it's not a trivial question. And I have grouped 4(a) through (c) together because they ask for the number of distribution poles owned jointly -- solely or jointly, poles with television -- cable television attachments and then

poles with communication attachments.

528
As Mr. Mace described, the reality of the situation is, it simply depends on the sophistication of their databases. It so happens that the data that Mr. Ruby provided for some of the CEA members that overlap with EDA members had GIS systems, and those GIS systems were populated with the data that Mr. Brett wanted. But that is the vast minority. In fact, only a few LDCs have GIS systems, and the ones that do usually use, as Mr. Mace explains, their GIS systems for distribution asset recording and don't deal with things like pole attachments of third parties in there.

529
So what we would expect, if the Board were to ask the individual LDCs to provide this data, is for some LDCs, the data would be available; but for other LDCs, they would have to go through written records and have people go on, literally, site visits to count attachments.

530
Now, the easiest in the hierarchy, of course, is, How many poles do you have? And the questions get more difficult as you ask what specific attachments are on each pole.

531
With respect to questions (d) through (g), which ask for revenue information, I heard Mr. Brett to say he's obtained information that he's satisfied with for (f) and (g), which I appreciate.

532
Questions (d) and (e), our position is, simply, that the EDA doesn't have it. Of course, we do accept and acknowledge that our members must have it. Our members have not provided that to us. But we would ask that we only be compelled to ask our members for it with some guidance from the Board, or some direction from the Board, that the LDCs should be providing it in order to assist in the gathering process, and if the Board believes it's appropriate for the information to be filed at this time.

533
In terms of general responses to the CCTA's motion, there are really three primary responses.

534
The first one which I think encapsulates what I've gone through is the data requested by the CCTA is not impossible to provide; we're not suggesting it is. But it's more or less difficult, depending on an individual LDC's record-keeping and history of attention to this particular issue of pole attachments. And so when we ask our members about this, we kind of get a blank stare-back; we're not sure exactly what to provide, I should go further, even if we would provide it to you, which is never clear unless we undertake to keep it in confidence, which is not helpful to the parties in this proceeding.

535
Secondly, the EDA submits that efficient regulation in the electricity sector dictates that only information which is subject to regulation ought to be filed with the regulator. And I hear my friends about best efforts to respond to interrogatories, and the EDA simply doesn't have it and has made inquiries. But we urge on this Board not to require the LDCs to go and do work, and what I hope is taken from Mr. Mace's affidavit is that it is work for the LDCs to get at this data, unless the Board needs the data to regulate.

536
Those are my submissions, Mr. Chair and Members of the Panel.

537
MR. KAISER: Ms. Friedman, Mr. Brett -- just dealing with, first of all, questions 6(a) and 6(b), he says that the information - and he'll correct me if I'm wrong - in account 1830 and account 5705 would be satisfactory. If he's happy with that, given whatever frailties may exist with respect to these accounts, will your clients have any problem producing that?

538
MS. FRIEDMAN: Well, the EDA doesn't have it. We can request it --

539
MR. KAISER: No. I --

540
MS. FRIEDMAN: -- from the members.

541
MR. KAISER: I understand that. And part of the problem I'm having here is, you're here making submissions on behalf of these embers. When we ask you for something, you say, I don't have it, the members have it.

542
MS. FRIEDMAN: That's right.

543
MR. KAISER: Can you not speak on behalf of your members? Can you ot tell us whether they would be prepared to produce that r not? The account information. I'm not asking them to go on some grand inquisition.

544
MS. FRIEDMAN: Yes.

545
MR. KAISER: Do you have any guess whether they would be willing to do that?

546
MS. FRIEDMAN: Well, let me tell you this: From my discussions, and believe me, we have had plenty of discussions on what data is out there and how we can get a handle on it, the members would be reluctant to provide it to us for this very reason. That is not the embedded cost data that Mr. Brett is really getting at. And they would fear that that's what it would be used for. So they're in a bit of a quandary.

547
Quite frankly, this Board regulates the LDCs. If the LDCs are told to provide information to the Board, they have to and most certainly will. But with respect to a request coming from their industry association, what they tell us is that that's not what the CCTA wants. The CCTA wants to get at an embedded cost. That's not how you get it, by looking at those two accounts. So if we provide that information to you, it will be misused. That's their concern.

548
I mean, I think none of the questions are more clear on that than that very last one with respect to pole maintenance expense. Mr. Brett suggests you get it out of one account, and our members say, Excuse me, I would have to sit down with my accountant and go through five or six different accounts.

549
But as I said, Mr. Chair, if the Board were to direct the LDCs to provide specific account information, no doubt they would have to provide it.

550
MR. KAISER: Well, I understand the problem, but this is sort of a chicken and egg situation. On the one hand you say give Mr. Brett what he really wants, we'll be here forever doing expensive studies and they'll go on for months. He's suggesting to the Board, I'm happy with the information in these accounts. You, of course, will have an opportunity to make whatever submissions you want on behalf of your client if that's not accurate information or not representative.

551
I'm just trying to get to first base. Is there a lot of work in producing that information if the Board is prepared to rule that you produce at least this account information?

552
MS. FRIEDMAN: What's in account numbers? I wouldn't expect. I expect that their bookkeeper can look at what is in that account.

553
MR. KAISER: All right. I would have thought so.

554
And while we're on this, on 6(g), this was the weighted average cost of capital. You acknowledge that they had it and I take it they didn't want to produce it unless the Board ordered them to produce it?

555
MS. FRIEDMAN: That's correct.

556
MR. KAISER: All right. And then over in question 4, we had a similar issue, this was 4(d) and (e), Mr. Brett says that's in account 4210. You may have some quarrel about whether that is actually the information you want, but I take it the bookkeeper could produce that if the Board so ordered? This was the annual revenue of cable television pole attachment fees and the total annual revenues from all attachment fees. There is some suggestion that would be in account 4210.

557
MS. FRIEDMAN: Right. The members would be able to provide the data in that account. I can tell you they might take issue with what's encapsulated this that account.

558
MR. KAISER: I understand.

559
MS. FRIEDMAN: Exactly.

560
MR. KAISER: Now, Mr. Brett, you've heard the response. I will give you an opportunity to make your submissions, but on 4(a), (b), and (c) where we're counting up poles, some with communication attachments, some with cable attachments and the total, do you really need that? Why do you need that? Before we send an army of people around the

province
counting telephone poles, do you really need it?

561
MR. BRETT: One of the questions there was -- one of our comments there was, we assumed that the --
each LDC when it sends out its bills, it has to bill the cable companies on an annual
basis. And when it bills them, it's got to effectively tell them how many attachments it's
billing them for. So we don't quite follow the logic. We think the billing trail should give
that information. It should --

562
MR. KAISER: So you would be happy with taking that information from existing bills to cable
companies, where they have it?

563
MR. BRETT: Yes.

564
MR. KAISER: That would be satisfactory for you?

565
MR. BRETT: For the -- that's right. For the --

566
MR. KAISER: You're not asking those companies that are not submitting bills to your members, adding
up the poles, to go out and count them.

567
MR. BRETT: No, we're not.

568
MR. KAISER: Apparently, they don't know how many poles they have.

569
MR. BRETT: We're not asking them to go out and count them. Anybody who is, If I've got this right,
any LDC on which we have attachments will be sending us bills. So they would have --

570
MR. KAISER: Why wouldn't your members already have them? Why can't your members -- they're
getting the bills. Well, why do we need to go back to these people and ask them how
many poles they're billing for?

571
MR. BRETT: Just on that. I will answer that just in a second. I think you're right on that, but we're also
asking for the bills -- we want to know about telecommunications attachments; in other
words, revenues from telecommunications carriers.

572
MR. KAISER: Why do you care about telecommunications?

573
MR. BRETT: Sorry?

574
MR. KAISER: Why do you care about the telecommunication poles?

575
MR. BRETT: Well, we're trying to get a complete picture, I guess, of -- what we need for purposes of

establishing an average pole rental charge is an average of the number of attachments per pole in the province. So we will want to know effectively: What is the distribution? What's the frequency distribution - that's a crude word - but do most poles have two attachments, three attachments? We have our views on this, but we're trying to get more information to nail that down.

576
So we want to know -- and -- we want to know how many, you know, what -- how many poles of each distributor have telecommunications attachments as well as cable attachments. The cable, we would have, but we wouldn't have the telecommunications. And again we would go to the bills. I mean, they would have bills for those.

577
MR. KAISER: Let's say 60 percent of their poles have cable and 40 percent have both. How does that help you?

578
MR. BRETT: Well, that ultimately -- ultimately it -- you're going to be calculating a charge to the cable companies for usage, a usage-based charge, and it will have a -- one of the variables in that formula is how many communications parties are sharing that communication space. If there is two, then it's divided two ways. If there's three, it's divided three ways. If it's one, I think it's for us.

579
MR. KAISER: But this interrogatory just deals with number of poles, it doesn't talk about the revenue.

580
MR. BRETT: No. That's true. But later on, it -- oh, I see. I may be confusing two sets of questions. The first questions deal with number of poles, then further on we talk about revenues from --

581
MR. KAISER: So I don't see in any of these interrogatories how you're going to get to the information you want. You're going to get the number of poles.

582
MR. BRETT: Yes.

583
MR. KAISER: Some are going to be cable only, some are going to be telecom only, some are going to be both; fine. You haven't asked for the revenue with respect to those poles.

584
MR. BRETT: I think we have. I think in (b) and -- I think in (g) and (d) through --

585
MR. KAISER: (e) is all attachment fees.

586
MR. BRETT: Right.

587
MR. KAISER: So for those poles -- that's not going to give you the revenue broken down in those three

categories.

588

MR. BRETT: Well, (d) will give me revenue from cable television attachments, and (e) gives me total annual revenues from all attachments, so it will give me some categorization. We thought there it would just be a question of what the bills were. We could follow the bill chain.

589

MR. KAISER: Well, you've got a total and you've got electricity.

590

MR. BRETT: We have got a total and we have got cable.

591

MR. KAISER: And you've got cable.

592

MR. BRETT: Right.

593

MR. KAISER: So how are you going to allocate those? I mean, think about the statistics. You're going to have three categories, you're going to have some poles that have both, some poles that have one or the other. You're going to have three categories of poles.

594

MR. BRETT: We have a few -- we probably have more than two as well.

595

MR. KAISER: You may have some poles that have none; right?

596

MR. BRETT: And some that have more, yes.

597

MR. KAISER: Anyway, I mean, if you think you need it, you need it. It's not immediately clear to me that you're going to be able to do the calculation that you think you can.

598

MR. BRETT: I think the only other point I would make on the -- Mr. Chairman, is that we -- on the depreciation, we don't see any reason why depreciation would be different for a joint-use pole and a sole-use pole. The poles, to us, are poles. And as I think will become -- if it isn't clear now, I think it will become clear in the course of the proceeding, that the overall driver for the pole cost is the electric use.

599

So you don't change the depreciation on that pole by adding an attachment to it for cable purposes or for some other telecommunications purpose.

600

MR. KAISER: I just want to make comment to you. I mean, you've expressed a concern, which I think the Board recognizes and accepts, that this process has probably gone on longer than it should have. And I'm just urging you to make sure you actually need this data before you set up a situation for a further delay. So just think about that.

601

Mr. Sommerville has a question.

602

MR. SOMMERVILLE: Ms. Friedman, if I understand your submissions with respect to this motion, it's not that the questions that are being asked are inappropriate or not relevant to the establishment of a pole-access fee, if that, in fact, is the outcome of this proceeding, you're not suggesting that.

603

MS. FRIEDMAN: No.

604

MR. SOMMERVILLE: You're suggesting that there is some difficulty in producing this information?

605

MS. FRIEDMAN: That's correct.

606

MR. SOMMERVILLE: That gives me a dilemma, in suggesting that your clients ought to either produce the information within a reasonable -- within some reasonable accuracy, or accept the vastitudes of not having produced it. And leaving the field, in fact, open with respect to costs, information and that sort of thing.

607

I understand your dilemma to some extent, but it is a dilemma that is inherent in this kind of process, that if you don't produce information when it is appropriately requested, you are faced with the vicissitudes of having failed to do so. And, you know, all information with respect to costs or any offsets that your clients may choose to rely upon will be lost to them.

608

MS. FRIEDMAN: I appreciate that, and believe me, I've been struggling with that for quite some time, as you can imagine.

609

The problem is that the LDCs, as regulated entities, are used to filing information with the Board that they've been told to file, and they're at a little bit of a loss here with exactly what they file.

610

MR. SOMMERVILLE: Right.

611

MS. FRIEDMAN: And so that's been a fundamental problem. I mean, they've expressed two problems. One is, We don't want to provide it to you; we don't know what use is going to be made of it; the Board hasn't asked us for it; our history of dealing with our regulator is when the Board wants specific information, we file that specific information. So, that's really what the problem is. And I, of course, and the EDA as an organization has been struggling with that. We don't want there to be a data vacuum. That's why we brought the motion for bifurcation, and built in that, said, Before -- if you tell us you need the information because you're going to regulate, please allow some kind of a motion hearing process to determine exactly what's out there, how the LDCs should provide it to you, because historically that's what they're used to doing. You tell them you want specific information and they can do it.

612

And then, you know, of course what they also expressed is, Who's paying for us to go figure out what this data is, and how to analyze it. But we will leave that aside. And then we'll go and do it. But that's why we've asked for that.

613
When it became clear, through trying to get answers to interrogatories, that the LDCs, quite simply, we're shaking their heads not knowing what to do, that we needed some Board guidance as to how they should file it.

614
MR. SOMMERVILLE: The fact of the matter is that cases come along, and the Board has rules. I mean, if you need direction as to whether you should answer the questions, you may not need to look much further than the Rules of Procedure for the Board which require you to respond to interrogatories unless there is a valid objection to the question that's being asked. And I don't see that here.

615
I mean, the Board does provide direction, and is providing direction within its practice rules with respect to these matters. And the real risk, in terms of trying to establish a revenue stream, which is what this is at the end of the day, for the utility, surely they want to get their information before the Board on these important aspects of the question.

616
As we sit here today, in the absence of answers to these questions, we don't have that information. And, I mean, I don't know how much more clearly we could put it, that your clients need to address their minds, before the -- I would think, you know, one approach to this is they need to address their minds to this subject matter before this hearing resumes.

617
MS. FRIEDMAN: That's right. I think I should just point out one more mental stumbling block, if that's what I can call it, and it's that the position of all of our members is, there is no need for the Board to be involved at all. And so that's always their first stumbling block. You're asking us to go out and give you detailed information. We're quite confident, and unfortunately that might be overconfidence and I hope that they're not incorrect, but the Board will see that it's not necessary that they gather -- that we gather and they have all of this information.

618
And so we've got kind of two stumbling blocks. One is the Board does not need this data and they will see that; and secondly, if they do need it, we need some help as to how exactly we go about providing it to them, as we do when they choose to regulate other aspects of our business.

619
MR. SOMMERVILLE: There's a gamble in that equation.

620
MS. FRIEDMAN: That's correct. There is.

621
MR. KAISER: I come back to the practicality of -- I understand this problem that they don't want to respond until they're ordered to respond. But your clients are sending out

bills now to
telecom companies charging them for pole attachments; correct?

622
MS. FRIEDMAN: Let me address that, Mr. Chair. There is a couple of complications there.

623
The first one is, historically, they've sent out bills but they're not per attachment, they've been per pole.
Now, there's been a shift in the thinking, and, quite frankly, most LDCs believe the charges should be per
attachment. So, so far, if one of Mr. Brett's client's members has six attachments on a pole, they just get
one bill for the pole. The LDCs' view is they should be paying six times an attachment rate. But that's not
what's been happening. So that's one problem. So the bill data won't give you, unfortunately, a
per-attachment charge, even though, I'm not sure if I hear that from Mr. Brett, I know that lots of the
LDCs believe that, going forward, they should be able to negotiate per-attachment rates, because it's per
attachment that their costs are affected.

624
Secondly, there's a bit of a problem with bills in the sense that some LDCs simply stopped sending out
bills because they weren't getting paid. So the bill-keeping cycle, I mean, there -- again, I don't want to
get into evidence, but there are instances where, I hope this Board will hear from my witnesses, bills
haven't been paid for years and the attachments are just going -- so the LDCs themselves spend very -- try
to spend very little money on monitoring exactly what's going on but for safety because they don't feel
they're recovering their costs for doing so.

625
And so they tell us that -- I fully agree with Mr. Brett that good, you know, accounting and management
practice would say you have all of this data. They tell the EDA they don't have the data because they're
not recovering the costs of doing it and they have too many other regulatory priorities.

626
So that's a bit of a dilemma. Certainly, as I've said before, I think Mr. Brett's clients should have the bills
that they received, and also my clients should have any bills they send out. So at that level, I think both
Mr. Brett and I ought to be able to get that information, if the LDCs will give it to us, so -- and his clients
will give it to him. But I don't think that the bill collection or collating process is going to get you any
details about attachments, given the way charges have been made historically.

627
MR. KAISER: Okay. We're not asking your clients to produce information they don't have, because I'm
sure that the applicant doesn't want to delay this a couple of years to go and find that
information. They are sending out bills, whether they collect them or they don't collect
them. If they don't send out bills, that's the end of the story.

628
Those that do send out the bills, could they not give us the total revenue and the total number of poles
and/or attachments? You would be happy, Mr. Brett, if that was on the last month?

629
MR. BRETT: Yes.

630
MR. KAISER: You don't need a year's worth of data?

631
MR. BRETT: No, I don't think we do, sir. We can extrapolate from that, yes.

632
MR. KAISER: And those that have it, have it; those that don't have it, they may do it on a different basis, but they have what they have. Mr. Brett will have to accept what they have. We don't want to manufacture anything. We just want stuff that is going out the door now, whatever shape or form it may look like. Is that acceptable, Mr. Brett?

633
MR. BRETT: Yes, sir.

634
MR. KAISER: Mr. Brett, did you have any response to ...

635
MR. BRETT: Excuse me, Mr. Chair, Panel, I don't have any further comments. Thank you.

636
MR. KAISER: Thank you, Mr. Brett.

637
Any other comments? Mr. Dingwall?

638
We will break now for an hour and a half and come back at 2:30 with our decision.

639
--- Luncheon recess taken at 1:00 p.m.

640
---On resuming at 2:31 p.m.

641
DECISION ON MOTIONS:

642
MR. KAISER: The Board's decision in this matter will deal with the matters in the order in which they were argued this morning. First, we'll deal with the cost issue.

643
Having heard the submissions of the different parties, the Panel has concluded that each party should be responsible for its own costs. This is subject to the Board costs being shared equally by the cable companies and telecom companies on the one hand and the electricity distributors on the other.

644
For the moment, we will leave the division of the costs in the two groups up to the members of those groups. If the cable companies and the telecom companies can't agree, they can speak to the Board; and, to the same degree, if the CEA and EDA can't agree, the Board may be spoken to in that regard.

645
To the Board costs, we will add the costs of the expert evidence that has been prepared jointly by the CEA and the EDA, and we will add the costs of Energy Probe. We recognize that based on an earlier decision, expenditures were incurred with respect to that expert evidence. We also realize that Energy Probe is a non-commercial entity, and perhaps of all the parties is more aligned to what might be regarded as a consumer interest or the public interest. That's the reason we have dealt with their costs differently.

646

We have not dealt differently with the costs of the Major Power Users, and if there are submissions that need to be heard in that, we're prepared to listen to them. But the ruling of the Panel is that each party bears its own costs, subject to what I've said with respect to Energy Probe.

647
We realize that we've departed from our earlier decision with respect to costs in this matter, but the proceeding has changed materially in its complexion. In particular, the telecom companies have intervened and we think that has made a difference. We think it is important that the access to be enjoyed by the telecom companies be dealt with at the same time as the cable companies. It's not in the public interest, or in the Board's interest, or any of the parties' interest to split this
into two separate proceedings.

648
We recognize that these are essential facilities. They are not only monopoly assets, as Mr. Brett stressed, but they are essential facilities, and non-discriminatory access is important. In this regard, the Board notes these industries are converging. The cable companies are increasingly competing with telecom companies and vice versa, and the LDCs are, themselves, entering into some telecommunication activities. In such circumstances, it is important that there be non-discriminatory access and no undue preference to any of the competing entities.

649
The next matter deals with the motion of the Electricity Distributors Association filed with the Board on September 13th. That motion requested a Procedural Order to bifurcate this proceeding into two phases; phase one, the current phase, wherein the Board would determine if the Board will set specific terms of access; and B, if necessary, a second phase to determine the specific terms or charges, if any, which the Board wishes to set.

650
Having heard the submissions of the parties, the Board has concluded that it would be unwise to further delay these proceedings. As mentioned by Mr. Brett, this application was filed back on December 16th of last year. We are now nine months into the process. This entire matter has been proceeding for years. It's important that it get resolved in a timely fashion and the Board is not open to any further delay.

651
We are particularly concerned in this regard with the fact that this motion was brought late in the day. Accordingly, this motion is denied.

652
The third matter is a notice of motion that was filed by the CEA on September 24. This was a motion for an order for disclosure on the public record of an unabridged response of the Cable Television Association, answers to OEB Staff Interrogatories Nos. 2 and 6, and an order requiring the CCTA to answer the CEA's Interrogatory No. 3(b), which was of similar effect. The third aspect of that motion was for an order for the disclosure on the public record of an unabridged response of MTS Allstream's response to OEB Staff Interrogatory No. 2.

653
In this proceeding before us, this morning MTS Allstream was not represented, but we did hear from counsel for the CEA and the Canadian Cable Television Association. Pursuant to the discussion with the parties, counsel for the CEA, Mr. Ruby has agreed to accept these answers in confidence, and we accept his undertaking that they will remain in confidence. Mr. Ruby has indicated to the Board that if he requires disclosure of this material to his client, he will approach the Board for further direction. Mr. Brett, for the Canadian Cable Television Association, has agreed to that procedure.

654
With respect to MTS Allstream, although they're not represented, we will ask them to comply with the same procedure.

655
Last but not least, and perhaps one of the more complicated motions, is the motion by the Cable Television Association of September 28th, requiring that the Electricity Distributors Association be ordered to provide a full and adequate

response to CCTA Interrogatories 4(a) through 4(g), and Interrogatory 6(a) through 6(g).

656
I'm going to try to deal with those in the order in which they were raised. Dealing first with questions 4(a), (b), and (c). This was a question posed by the Cable Association regarding the number of distribution poles owned, either solely or jointly with another party. 4(b) was the number of distribution poles with cable television attachments. 4(c) was the number of distribution poles with communication attachments, other than cable television attachments.

657
The discussion on the record indicates that the LDCs do, in fact, bill both cable companies and telcos currently, and that those bills would indicate revenues as well as the number of poles and/or attachments. Accordingly, we direct the LDCs to provide a copy of the bill for the last available month in each of those categories, 4(a), 4(b), and 4(c), to the extent that they're available. The Board is not requesting the LDCs to provide information they do not have. What the Board is requesting is that they provide the existing bills, obviously totalled, so that an aggregate amount by month can be made available to counsel for the Canadian Cable Television Association.

658
Mr. Brett has agreed on the record that that is acceptable, and the last month's billing will be sufficient for his purposes.

659
Turning next to questions 4(d) and 4(e). Question 4(d) is the annual revenues from cable television pole attachment fees. 4(e) is the total annual revenue for all attachment fees. We're led to believe, by Mr. Brett, that such information is available in the uniform system of accounts, account number 4210, and accordingly we direct each of the LDCs to produce that information. Again, we are not asking the LDCs to produce something they do not have. We're asking them simply to provide that information for the last reporting period for that account.

660
Regarding 4(f) and 4(g), we understood counsel for the Canadian Cable Television Association to say they had that information and a Board ruling is not required with respect to those matters.

661
Turning next to Interrogatory 6, and starting with 6(a)and 6(b), question 6(a) related to the embedded costs per pole and 6(b) was the net-embedded cost per joint-use pole.

662
We are led to believe that the information referred to and requested in 6(a) is available in account 1830, in the uniform system of accounts. And the information requested in 6(b) is available in account 5705. Again, we direct each of the LDCs to produce that information from those accounts for the last reporting period.

663
We accept and understand the submissions of counsel for the EDA that such information may not be exactly what Mr. Brett requests, but in order to proceed in an expeditious manner, we'll start with this and ask the LDCs to produce the information in that account, and we'll go from there.

664
We then come to question 6(c) and 6(d). In this respect, an affidavit was filed by Mr. Mace, who is the vice chair of the EDA and the chief executive officer of Thunder Bay Hydro. Mr. Mace states, in paragraph 18 of that affidavit that:

665
"In reality, the LDCs have never been required and do not track these costs."

666
While we accept Mr. Mace's statement, the Board is unclear, from that answer, as to whether the information doesn't exist for some of the utilities or all of the utilities. Accordingly, we would ask counsel for the EDA to inquire of each of the LDCs that she represents, and, for that matter, Mr. Ruby, in the case of the seven LDCs that he represents - I'm not sure whether there is an overlap or not - to

inquire of their clients, do they or do they not have that information. If they do have that information, it should be produced; if they do not have that information in a manner that can be readily supplied to the Board, we are not asking at this time that it be created or extensive efforts be undertaken to obtain it.

667
We then come to 6(e) and 6(f). 6(f) was the average pole maintenance expense per joint-use pole and 6(e) was the annual depreciation charge per joint-use pole, as reflected in the books of the LDC. We are led to believe that such information is contained in account 5120, and we ask and we direct the LDCs to produce such information as contained in the most recent reporting period.

668
With respect to 6(g), that was the weighted average cost of capital, we understand from counsel of the EDA that such information exists, and accordingly, the Board directs each of the LDCs represented by that association to produce that information.

669
We believe the above information can be produced in a timely fashion. It appears to the Board that it's readily available. In order to move on with these proceedings, we ask that it be produced within seven days. If there is a problem with that timeline, the Board may be spoken to.

670
Thank you very much. Is there anything arising from the Board's decision that we need to consider at this time?

671
Mr. Brett?

672
MR. BRETT: No, sir, I have no questions at this time.

673
MR. KAISER: Mr. Ruby?

674
MR. RUBY: If I may just have a moment to consult. No, thank you, Mr. Chair.

675
MR. KAISER: Thank you, sir.

676
Mr. Dingwall?

677
MR. DINGWALL: No questions, sir.

678
MR. KAISER: Ms. Friedman?

679
MS. FRIEDMAN: Sorry, if you could just give me one moment to look back --

680
MR. BRETT: Mr. Chairman, just while Ms. Friedman is checking, I assume our settlement conference proceeds tomorrow as planned?

681
MR. KAISER: Yes.

682
MS. FRIEDMAN: No.

683
MS. LEA: Mr. Chairman, I'm not sure if it's of any assistance to the parties, but I just thought I'd let folks know that I was only here for the day, so if you have questions of a legal nature and need to speak to counsel for the Board in the matter, it will be Mike Lyle rather than

myself.

684

MR. KAISER: Thank you.

685

That said, the Board is adjourned.

686

--- Whereupon the hearing adjourned at 2:50 p.m.

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Doc: 13BFK
Rev: 0

ONTARIO ENERGY BOARD

Volume: 1

26 OCTOBER 2004

BEFORE:

G. KAISER
PRESIDING MEMBER AND VICE CHAIR

P. SOMMERVILLE
MEMBER

C. CHAPLIN
MEMBER

1

RP-2003-0249

2

IN THE MATTER OF a hearing held on Tuesday, 26 October 2004, in Toronto, Ontario; IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B); AND IN THE MATTER OF an Application pursuant to section 74 of the Ontario Energy Board Act, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licences of electricity distributors.

3

RP-2003-0249

4

26 OCTOBER 2004

5

HEARING HELD AT TORONTO, ONTARIO

6

APPEARANCES

7

MIKE LYLE
Board Counsel

TOM BRETT
Canadian Cable Television Association

PETER RUBY
Canadian Electricity Association

KELLY FRIEDMAN
The Electricity Distributors Association

BRIAN DINGWALL
Energy Probe

JENNY CROWE
MTS Allstream Inc.

LJUBA DJURDJEVIC
Toronto Hydro

ANDREW LOKAN
Power Workers' Union

CAROLINE DIGNARD
Cogeco

ADELE PANTUSA
Hydro One

8

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14

--- Upon commencing at 9:32 a.m.

15

MR. KAISER: Please be seated. Good morning, ladies and gentlemen. We're here today to hear the application by the Canadian Cable Television Association to amend the licences of the province's LDCs with respect to charges or access fees with respect to full access.

16

Could I have the appearances, please.

17

APPEARANCES:

18

MR. BRETT: Good morning, Mr. Chairman, Panel. My name is Tom Brett. I'm acting this morning for the Canadian Cable Television Association. I'd also like to enter an appearance, although he's not here today, for my colleague, Ken Engelhart, who will be here starting on Wednesday, starting tomorrow, with me, to assist me in this. Thank you.

19

MR. RUBY: Peter Ruby, counsel for the Canadian Electricity Association.

20

MS. FRIEDMAN: Kelly Friedman, counsel for The Electricity Distributors Association.

21

MR. DINGWALL: Good morning, Panel. Brian Dingwall, counsel for Energy Probe.

22

MS. CROWE: Hi, Jenny Crowe, regulatory counsel, MTS Allstream Inc.

23

MS. DJURDJEVIC: Ljuba Djurdjevic, in-house counsel to Toronto Hydro.

24

MR. LOKAN: Andrew Lokan, counsel for the Power Workers' Union. Thank you.

25

MS. DIGNARD: Carolyn Dignard, counsel to Cogeco.

26

MR. KAISER: Sorry, I didn't hear that name?

27
MS. DIGNARD: My last name? Sorry, Dignard, D-i-g-n-a-r-d.

28
MR. KAISER: You represent Cogeco?

29
MS. DIGNARD: Yes.

30
MR. KAISER: Thank you. Anyone else?

31
MS. PANTUSA: Adele Pantusa, counsel for Hydro One.

32
MR. LYLE: Mike Lyle, counsel for Board Staff.

33
MR. KAISER: Thank you, Mr. Lyle.

34
Mr. Brett, do you represent all the cable companies?

35
MR. BRETT: Yes, sir, I represent the Association, all the cable companies are members of the Association.

36
MR. KAISER: All the cable companies in Ontario?

37
MR. BRETT: Yes, sir.

38
MS. ASSHETON-SMITH: Sorry, excuse me, there may be one or two -- it's Lori Assheton-Smith, The Canadian Cable Television Association. There may be a few Ontario cable television companies that are not represented by the CCTA, and the number is very, very small. And I should add, just for clarification, that while Ms. Dignard is here on behalf of Cogeco, she's in-house counsel to Cogeco, and Cogeco is represented by the CCTA.

39
MR. KAISER: Is that correct, that Cogeco will be represented by Mr. Brett?

40
MS. DIGNARD: Yes, Yes.

41
MR. KAISER: Thank you.

42
Who are the cable companies not represented, Mr. Brett? You said there were cable companies that are not members to have association?

43
MR. O'BRIEN: I can't give you a summary of the names, but they are very small cable companies.

44
MR. KAISER: Can you undertake to advise us?

45
MR. BRETT: We could give you an undertaking on that. It would probably take us a little time to find it, but we could get it to you, I'm sure, today.

46
MR. KAISER: I'm sure Mr. O'Brien can find it over the lunch hour.

47
MR. LYLE: We'll mark that as Undertaking F.1.1, Mr. Chair.

48
UNDERTAKING NO. F.1.1: TO PROVIDE A LIST OF CABLE COMPANIES IN ONTARIO NOT REPRESENTED BY THE CCTA

49
MR. KAISER: And Ms. Friedman, if I could turn to you on the same issue, what LDCs do you represent and what LDCs do you not represent?

50
MS. FRIEDMAN: The EDA represents all the LDCs in Ontario, but for London Hydro, who is not a member, and some LDCs located on native reservations.

51
MR. KAISER: Can you give me those names?

52
MS. FRIEDMAN: I can undertake to do so.

53
MR. KAISER: All right.

54
MR. LYLE: We'll mark it as Undertaking F.1.2, Mr. Chair.

55
UNDERTAKING NO. F.1.2: TO PROVIDE A LIST OF ALL LDCS IN ONTARIO NOT REPRESENTED BY THE EDA

56
MR. KAISER: And with respect to Toronto Hydro and Hydro One, who -- do I understand they are separately represented here in these proceedings?

57
MS. FRIEDMAN: That's correct.

58
MR. KAISER: Anyone else separately represented in the LDC community, of course?

59
MS. FRIEDMAN: I don't believe so.

60
MR. KAISER: Just those two?

61
MS. FRIEDMAN: Yes.

62
PRELIMINARY MATTERS:

63
MR. KAISER: Now, we have a settlement proposal which, in due course, I'll let Mr. Brett walk us there.

64
Before that, I understand there are some preliminary matters. One I understand, Mr. Ruby, has to do with

you, and this relates to the confidentiality ruling that we made last day. And as I understand it, there were
some notes that related to some of that pricing information, I think it was Great Lakes Power and Hydro
One. Was that correct?

65
MR. RUBY: Yes, Mr. Chair. It's probably not appropriate for me to go into exactly what was in the
confidential filing. I just note that not all of it turned out to be pricing information.

66
MR. KAISER: No, I understand that. But what we're talking about are the notes.

67
MR. RUBY: Yes, the non-numeric data.

68
MR. KAISER: Right. You're not talking about the prices.

69
MR. RUBY: Yes.

70
MR. KAISER: And the notes, I think we can say, purported to describe the state of negotiations; is that
correct?

71
MR. RUBY: Yes, and at least one other factor.

72
MR. KAISER: All right.

73
MR. RUBY: It's a bit difficult to characterize without --

74
MR. KAISER: All right. Mr. Brett.

75
MR. BRETT: Mr. Chairman, maybe I could just be of help here. The CCTA has agreed -- just agreed
on further thought to consent to release those notes, those two notes in question that Mr.
Ruby is seeking.

76
MR. KAISER: I thought you might. I do appreciate your accommodating Mr. Ruby in that regard.

77
MR. RUBY: Thank you, Mr. Chair. Thank you, Mr. Brett.

78
MR. KAISER: Let's move on to the other preliminary matter, which is the evidence, Ms. Friedman, that
you wish to call, and we note Mr. Brett's objection. Is there some reason why this was
filed so late?

79
MOTION REGARDING EDA'S FILING OF
EVIDENCE:

80
MS. FRIEDMAN: The EDA's original submission makes a fundamental point that the

LDCs bargained in good faith and that they're not abusing market power. In the CCTA's response to interrogatories, specific allegations were made against specific LDCs. My understanding was that the appropriate time to address that was at the hearing and not engage in a paper battle following receipt of the interrogatory responses.

81
The evidence is consistent with our original submission, which is, we bargained in good faith, and responds specifically to what was said in CCTA interrogatory responses. Mr. Brett has raised concerns about the information being new, and not having time to prepare cross-examination. I've offered Mr. Brett to provide him with -- last week, to provide him with written statements as to what they were going to say so as he could prepare.

82
Mr. Brett suggested instead that what we do is bring my panel on for examination in-chief and then bring the panel back on November 8 for cross-examination. Unfortunately, I have not been able to pull my panel together for November 8. So far only one of the four is available to return. So that's where things stand.

83
MR. KAISER: Before we get to the scheduling, what's the relevance of this evidence?

84
MS. FRIEDMAN: This evidence is simply the LDCs' side of the story that they've bargained in good faith. There's allegations in the interrogatory responses that they have not done so, that they've rebuffed certain rates, that they have rejected access permits. And it's specifically for four LDCs who have seen these allegations made against them just to tell their side of the story.

85
So it's relevant to the question of whether regulation is necessary, that is, whether LDCs have abused market power.

86
MR. KAISER: All right. So you say that the evidence, if it shows that your clients bargained in good faith, let's say it shows that, we're to conclude what from that --

87
MS. FRIEDMAN: Well, you're to conclude that the evidence in the CCTA materials that they have abused market power is incorrect.

88
MR. KAISER: All right. Do you have any response, Mr. Brett?

89
MR. BRETT: Well, yes, I do, Mr. Chairman, Panel.

90
First of all, those allegations that we made that these were monopoly facilities and essential facilities, and also that individual LDCs were abusing their market power were made initially in our original evidence, which was filed in December 16th, 2003, about ten months ago. Now, we made additional -- we enclosed letters at that time, in fact, three letters as an appendix to the original evidence.

91
It's true we made further allegations with our IR responses, attached more letters. But it seems to me the
time for the LDCs to make that pitch, if you like, was in their evidence, which they were given an extra
month to prepare and they could have laid all that out in their response, or at least laid out a response to
what we had said in our evidence filed back in December. So I do think it's out of time.

92
And the other thing is, a second point is, it goes without saying, I believe, but I just wanted to note it, that
anybody who appears -- you know, if you don't accept that proposition, anyone who appears on a panel
needs to be available for cross-examination, it seems to me. So if Ms. Friedman is not able to collect her
panel, assuming that we have some cross-examination at a later date, it seems to me she should pick some
new people for the panel so that the same people have to be available.

93
And I think it is new evidence, finally, and we would require some time to prepare to deal with that.
Those are my submissions, sir.

94
MR. KAISER: Thank you.

95
I'm not sure I still understand why it's being filed so late.

96
MS. FRIEDMAN: Mr. Chair, it's not being filed late. Perhaps it was my misunderstanding. The
allegations against these particular LDCs came up in their interrogatory responses. It's true they made other allegations in their initial evidence, but we
chose not to bother to respond to those.

97
MR. KAISER: So there was something that came up in the interrogatories that particularly hurt you and
you felt you had to call this panel?

98
MS. FRIEDMAN: Well, that the LDCs in particular wanted to stand up and tell their side to have
story, too.

99
MR. KAISER: When did you get those interrogatory responses?

100
MR. BRETT: They were filed September 30th, I believe, the responses.

101
MS. FRIEDMAN: Right. And so there was no procedure --

102
MR. KAISER: I see.

103
MS. FRIEDMAN: -- to rebut interrogatory responses.

104
MR. KAISER: I see.

105
MS. FRIEDMAN: My understanding is that you do that at the hearing.

106

MR. KAISER: All right. I understand that point. Let me try to understand another point, though. Your argument, if I understand it, is that all of this evidence on who did what and who's the bad guy would somehow lead the Board to conclude not to regulate in this area; is that correct?

107
MS. FRIEDMAN: That's my hope.

108
MR. KAISER: That's your position.

109
MS. FRIEDMAN: That's right.

110
MR. KAISER: And this dispute has been going on for months, if not years; you would agree with that?

111
MS. FRIEDMAN: Yes.

112
MR. KAISER: And what is it that's going to change? If the Board stepped aside, what is it that is suddenly going to happen that is going to cause these two parties to agree?

113
MS. FRIEDMAN: What's going to cause them to agree, Mr. Chair, is the fact that the regulator has spoken and has said, Solve it.

114
MR. KAISER: I see.

115
MS. FRIEDMAN: You know, and -- you know, the EDA's submission is that, what the Board ought to do is set out some guidelines or principles so that negotiations can take place.

116
MR. KAISER: Is it correct that, as I read the final submissions and the evidence, the only outstanding issue is really the price. The other terms, it looks like you can agree upon; is that correct?

117
MS. FRIEDMAN: I think that's fair, although I'd have to point out that there's an interrelationship between the price and terms.

118
MR. KAISER: All right.

119
MS. FRIEDMAN: So it's hard to say that everything has been solved. There are still outstanding issues between groups of negotiating parties, in addition to price.

120
MR. KAISER: Well, we're going to retire and consider your motion to call this evidence. But over the break, and it will be a short break of ten minutes, I'd like you to talk to Mr. Brett, and I'd like both of you to consider that we have serious doubts about the relevance of what I call the "bun fight." And we're spending a lot of Board time and a lot of your clients'

money going through this evidence. And I'd like both of you, as counsel to these associations, to seriously consider whether we can dispense with that and get on with the main issue, which is the price.

121
So if you two would kindly caucus and consider if you can be of assistance to the Board in that regard.
We don't know that it's necessary to decide who is the bad guy in a dispute that's been going on for years.
We'll come back in ten minutes.

122
--- Break taken at 9:47 a.m.

123
--- On resuming at 9:58 a.m.

124
MR. KAISER: Please be seated. Now, Ms. Friedman, any luck?

125
MS. FRIEDMAN: Mr. Brett and I have discussed the matter. Mr. Brett acknowledges that a basic premise underlying his application is that the LDCs have abused market power, and therefore regulation is necessary. I take it as my responsibility to rebut that premise, and I submit either the Board will allow me or disallow me to submit that evidence in rebuttal, but that it's my obligation to try to undermine that premise, which is a basic foundation of their bringing their application.

126
With respect to what may or may not change from the evidence, I submit further that the EDA's expert evidence, expert witness, speak to when it's appropriate or not appropriate to regulate, and the issue of whether market power has been abused is fundamental to that and the kind of principles that ought to be set by the regulator. Those are my submissions.

127
MR. KAISER: Mr. Brett.

128
MR. BRETT: Well, Mr. Chairman, we did have a discussion. We are of the view that the fact that these are monopoly facilities and the further fact that we think the LDCs have abused their power with respect to these facilities is an important part of our case, and so we didn't see how we could change or extract anything, any piece of evidence, from our submissions, sir. So we thought about it. We looked at whether it would be appropriate, and decided it wouldn't. So I'm sorry we couldn't make any progress.

129
MR. KAISER: All right. Before I go to the ruling on that issue, are you still looking for interim relief?

130
MR. BRETT: Well, I guess the interim relief is -- some time has passed on that. I'm not sure at the moment whether there would be much of a difference between interim relief and full relief. I think the notion of interim relief was that we would -- we are looking for a relief -- we're looking for expeditious relief, as soon as we can get it, so that we can get on with, you know, get on with our business, essentially.

131
MR. KAISER: No, I understand, but we can take it that that's been abandoned?

132
MR. BRETT: Yes, I think so.

133
MR. KAISER: All right.

134
Ms. Friedman, the panel's considered your submissions and of course those of Mr. Brett. And before I --
before we rule on that, I perhaps omitted to ask Toronto Hydro and Hydro One if they had any submissions on this.

135
MS. DJURDJEVIC: Well, Toronto Hydro had intended not to make independent submissions at this proceeding. We are being represented by the EDA. I would, just in support of Ms. Friedman's submissions, state our position that we believe there is some procedural fairness that the EDA should be allowed to call witnesses to rebut the allegations made in the interrogatory responses, as there was no procedure, as Ms. Friedman pointed out, to respond to interrogatory responses. And it would seem only fair that both parties, everybody agrees, this is a fairly fundamental issue to -- a threshold issue to this case, whether there should be regulation at all.

136
MS. PANTUSA: And Hydro One fully supports the position just advocated by Toronto Hydro. We also support Ms. Friedman's submissions.

137
MR. KAISER: Thank you. The two utilities that are separately represented here, you'll let me know if you want to make independent submissions. I'm going to treat, for the moment, that Ms. Friedman's representing the whole gang, but you feel free to chime in if there's something that doesn't represent the interests of your client.

138
MS. DJURDJEVIC: Thank you, Mr. Chair.

139
DECISION:

140
MR. KAISER: Having heard the submissions, the Board will hear the evidence being advanced by Ms. Friedman's client. We will schedule an appropriate time this week.

141
PRELIMINARY MATTERS:

142
MR. KAISER: Was there some time this week that you wished to call this panel?

143
MS. FRIEDMAN: Yes. In discussions amongst counsel, we thought that Thursday would be the day that we'd probably get to that.

144
MR. KAISER: All right.

145
MS. FRIEDMAN: So they're scheduled, as of now, to attend on Thursday.

146
MR. KAISER: And Mr. Brett, I'm in your hands on this. We can either deal with the cross-examination on Thursday or we can bring them back on November the 8th. What's your convenience?

147
MR. BRETT: My view would be to bring them back at a later date. We need some time to look at the -- look at that evidence and prepare a proper cross-examination. And as I said to you, I think that -- well, I think -- I'm repeating myself, but we feel that anybody that is on that panel should also be available for cross-examination.

148
MR. KAISER: We are prepared to do the cross-examination on November 8th. Can you have your panel here, or at least somebody here?

149
MS. FRIEDMAN: I'll do my best. Thank you.

150
MR. KAISER: All right. So we'll proceed on November 8th with the cross-examination, however many members of the panel Ms. Friedman can arrange.

151
Is there any -- outside of the -- did I understand you to say that you would be providing Mr. Brett with witness statements?

152
MS. FRIEDMAN: Well, that doesn't appear to be necessary now. What I was trying to accomplish was that they be examined in chief and cross-examined on Thursday. And so I thought to assist Mr. Brett last week I'd provide him with statements of what I expected them to say so he can do any research or preparation he needed to. But now he's got more than a week in between when he hears their evidence, and when he's cross-examining.

153
MR. KAISER: Is there any documentary evidence that you'll be putting in that you should be providing Mr. Brett with?

154
MS. FRIEDMAN: No documents.

155
MR. KAISER: All right.

156
MR. BRETT: Mr. Chairman, just on the point of the evidence, not to beat this, but what Ms. Friedman had suggested she would do is draft, herself, a statement of what she thought the witnesses were going to say. I had been interested in statements from the witnesses themselves, the witness statement from the witnesses themselves. Be that as it may, the one point I would emphasize is that, if someone is going to give evidence, these people

are, as I understand it -- I don't know whether you know this, but they're four executives from four separate LDCs.

157
Now, if each of these people's going speak to the circumstances of their particular LDCs and its negotiations with the cable company, they will only be able to speak, as I understand it, to the circumstances of their particular LDC. So, if four of them show up on a panel, and only two can come back for cross-examination, seems to me we're pretty severely prejudiced. I mean, if she can't get, if Ms. Friedman can't get, ahead of time, the agreement of four of them or however many she gets, three of them, she's got one she tells me she can't get for the 8th already, my submission would be that one then shouldn't be on the panel on Thursday. There should be a panel of three rather than a panel of four.

158
Because it's not like general evidence. These individuals can only speak to that situation. What we'll be faced with, if we don't have that principle, is, we can't cross-examine at all.

159
MR. KAISER: Is that the situation that on the 8th, are there going to be -- are we going to be absent some witnesses that give evidence on the Thursday?

160
MS. FRIEDMAN: So far I've been advised that one of the four cannot be available on the 8th. I will try again to see if he can shift his commitments.

161
MR. KAISER: Well, the Board has agreed to accommodate you, but I'd like you to accommodate Mr. Brett. I think his point is a fair one. Don't call any evidence that is not going to be available or subject to cross-examination.

162
All right, Mr. Brett, you're up to bat with the settlement agreement, your letter of October 19th.

163
PRESENTATION OF SETTLEMENT PROPOSAL
BY MR. BRETT:

164
MR. BRETT: Yes. Thank you, Mr. Chairman, members of the panel. The parties met for three days with Ms. Gail Morrison serving as facilitator. I think we all have copies -- you have copies of the agreement --

165
MR. KAISER: Yes.

166
MR. BRETT: -- in front of you. I'll just briefly take you through this, it's not --

167
MR. KAISER: Could you just stop there for a minute. Mr. Lyle, should we be marking this?

168

MR. LYLE: I believe it's already been filed and given an exhibit number, Mr. Chair.

169
MR. KAISER: It has? What exhibit number?

170
MR. LYLE: I don't see it listed in the prefiled material.

171
MR. KAISER: I didn't see it either.

172
MR. LYLE: So perhaps you're correct, Mr. Chair. We'll make it Exhibit E.1.1.

173
MR. KAISER: 1.1?

174
MR. LYLE: E.1.1.

175
EXHIBIT NO. E.1.1: COPY OF SETTLEMENT PROPOSAL

176
MR. KAISER: Thank you. Sorry for interrupting you.

177
MR. BRETT: There are five issues, and let me go through each of the five in turn, and then I'll return to just one or two particular aspects of the agreement.

178
Issue number 1 was, should the Board set licence conditions for distributors with respect to joint pole use, providing for conditions of access, including the charge for such access, and the answer says, as you can see there, are straightforward. One group of parties - CCTA, MTS Allstream, Quebecor Media, Energy Probe Networks, London Connect -- 360 Networks, London Connect and Energy Probe - said yes, and the EDA, CEA, PWU, and Hydro One -- or not the PWU --

179
MR. KAISER: Looks like --

180
MR. BRETT: CEA and Hydro One said no. The PWU took a position which is stated in an addendum that I sent to the Board dated October 20th. And it's a rather lengthy addendum, but I'll read it.

181
MR. KAISER: No, that's all right.

182
MR. BRETT: All right. Okay. I don't think that was any great surprise that there was no agreement on that issue.

183
On the second issue, though, we did reach agreement, after some considerable discussion. And in general, I think it would be fair to say that the parties reached more agreement than they thought they would. There was a genuine effort made, I believe, by both sides, and I believe Gail Morrison, the facilitator, assisted the process very ably. So we did reach agreement on certain issues, and we were able to provide a framework, or a sort of summary framework for issues that we didn't agree on, to some degree.

184
Number 2 is an example of an issue that we did agree on. Number 2 is:

185
"If the Board does set conditions of access, to what types of cable or telecommunications services
providers should these conditions apply to?"

186
And you can see the answer there is that they should apply to --

187
"These conditions should apply to access to the communication space on an LDC's poles by Canadian
carriers as defined in the Telecommunications Act, and cable companies, provided, however" - and this is
an important exception - "that these conditions shall not apply to joint-use arrangements between
incumbent local exchange carriers and hydro distributors that grant reciprocal access to each other's
poles."

188
And you will recall that that is really -- that exception is crafted to exempt the arrangement between Bell
Canada and the hydro companies in Ontario where they have, effectively, an arrangement where they use
each other's poles.

189
And then the third issue, issue number 3, which kind of gets you into the dollars and cents and the
structure of the charge. Issue number 3 is:

190
"If the Board does set conditions of access, what is the appropriate charge for joint pole use? What
principles, elements and methodology should be considered in the calculation of the charge? How should
the charge be applied? Should it be a uniform charge for the entire province?"

191
So what we've done here is outlined the positions of the parties with respect to each of (a), (b), and (c).
There wasn't agreement on either of (a), (b), (c). But what we did do is summarize the position, if you
like, of two groups. As this has evolved, there are two groups of parties with two different positions
throughout a lot of this.

192
So that -- we did agree, though -- I guess I should say, I anticipated that a little bit with respect to issue
(a), principles. We did agree on some principles which should apply, and they are the principles of
economic efficiency, fairness and competitive neutrality, and the fact that the pole charge should reflect
the fact that poles are monopoly assets. That's (a) on page 5. And (b), we agree on a range within which
the charge should fall.

193
Two things, really. The principle that one-time costs are recovered through one-time charges, and those
are the so-called make-ready charges that you'll hear more of as the proceeding goes along. And
secondly, that recurring charges should not be less than incremental costs and not more than stand-alone
costs. So that's the range we agree on. Now, granted, it's a broad range, but at least we put the range out.

194
And then (c), recurring charges should provide for full recovery of incremental costs and should contribute toward embedded costs. Incremental costs, I think we agreed, are costs that the pole owner would not have incurred but for the attachment of the poles.

195
And then finally, as we state here, we disagreed upon the method to determine the contribution toward embedded costs, the second part of that.

196
And then we go on to set out the two positions with respect to the method that should be used to determine the contribution of the cable companies and other telecom companies toward embedded costs.

197
First, the position of the CCTA:

198
"The contribution should be determined as a useage-based allocation of fixed costs measured on an embedded basis, as recorded in the books of the utility. The useage-based allocation should reflect the actual useage of the communication space on the pole (the 2 feet immediately above the clearance space) plus a proportional share of the neutral separation space, which is the 3.25 feet between the communication space and the power space."

199
The position of -- and that's the position of CCTA et al.

200
The position of the EDA/CEA et al. is that:

201
"The EDA, CEA, and Hydro One believe that local negotiations should determine the proper contribution. If local negotiations fail, a procedure to be put in place by the Board should be available so that parties could have the matter determined. In the context of that process, whether it be an application to the Board or submissions in some form of ADR process, the LDC would be required to justify the rate it seeks to charge on one or more of the following bases, among others:

202
"(a) take as a departure point a hypothetical joint-use pole where each user has the same requirements. The cost of these requirements would be shared equally and the additional cost of each user's incremental requirements would be borne by each user individually;

203
"(b) allocate shares of total cost based on the relative costs that would be borne by each user on a stand-alone basis;

204
"(c) divide the savings realized from a joint-use pole relative to stand-alone support structures on an equal basis; and

205
(d) a relevant consideration may be relative revenues.

206
"Finally, other allocation methodologies might be appropriate, excluding the CCTA's recommended

usable pole space methodology, but in any case -- excluding the CCTA's recommended usable pole space
methodology, but in any case, the onus is on the LDC to justify its chosen methodology."

207
And then Energy Probe had their own position on this issue, and it was that:

208
"With respect to the recovery of embedded costs, Energy Probe believes that it is not practicable to
determine costs on a utility-by-utility basis in advance of a cost rebasing exercise which is not anticipated
in advance of 2008. Energy Probe reserves its position with regard to which methodology best addresses
the appropriate cost recovery principles."

209
So that's with respect to principles.

210
MR. KAISER: Before you go on, can I ask, is Mr. Dingwall here?

211
MR. DINGWALL: Yes, sir.

212
MR. KAISER: Can you just elaborate on what your position is in this regard? I understand you're
reserving your position. What does that mean?

213
MR. DINGWALL: Well, we're reserving our position with respect to which methodology that's
being proposed for cost recovery is appropriate. But with respect to the question
of whether or not the Board addresses costs on a utility-by-utility basis or on a
global basis for the province, we're of the view that it's not practicable for the
Board to look at utility-by-utility costs, and that certainly the information would
not be available until 2008.

214
So to elaborate on that it's our view that the outcome of this process should be a rate which applies across
the province subject -- and we make this -- we elaborate on this further on in the settlement agreement --
subject to a ratepayer protection which enables either LDCs or cable operators to apply to the Board for
relief if it turns out that there's a substantial departure between the global rate and what the actual costs
are for the LDCs once those become determined in the cost rebasing exercises that are going to follow
this year.

215
MR. KAISER: I understand that. But assuming the Board proceeds and hears evidence as to what the
appropriate rate is, do you intend to take a position on what the rate should be or not?

216
MR. DINGWALL: We do intend to take a position on what rate and how it would be calculated
would be, once, of course, we've had the opportunity to test the evidence of the
methodologies put forward.

217
MR. KAISER: Right. Thank you.

218
MR. BRETT: Thank you, Mr. Chairman, Panel.

219
So we now move to the issue of how the charge should be applied, and again, there was no agreement on this. And so what I will summarize here or read to you are the positions of the two groups, well really two groups in addition to Energy Probe, in their own words, as it were.

220
So with regards to the question of how the charge should be applied, the parties have not reached agreement but summarize their positions as follows. Now, the CCTA group, if I could put it that way, believes that because costs are most readily determined on a per-pole basis, the charge should be applied on a per-pole, per-user basis and not on a per-attachment basis. Applying the charge on a per-attachment basis would result in overrecovery of incremental costs and an over-contribution toward fixed costs.

221
Each user, i.e., single corporate entity, entering into a joint-use agreement should only be charged one charge per pole, regardless of the number of attachments on the pole and the number of services offered by the user to its customers. And attachment for these purposes should be defined as agreed in section 1.5, revision number 5, of the Mearie CCTA draft model agreement, and a copy of that is attached at the end of the settlement conference -- of the settlement draft agreement.

222
The position of the EDA, CEA, PWU, and Hydro One is different. They state the way the charge should be applied should be consistent with the methodology chosen by the negotiating parties to underlie their agreement. Where the parties are unable to agree, application to the Board/ADR process could be made and the LDC would be required to justify the method of applying the charge as flowing from a methodology agreed upon by the parties or determined by the Board/ADR process.

223
And then the position of Energy Probe is reserved.

224
And finally, with respect to uniformity, and you've touched on this already, but the CCTA group, parties were unable to agree. The CCTA's group said, yes, there should be a uniform rate for all LDCs based on representative costs of LDCs using CCTA's proposed methodology referred to above, in 3(a) above. And then, notwithstanding the above, this refers to what Mr. Dingwall was saying:

225
"If the application of the uniform rate to a particular LDC would result in a significant under- or overrecovery of costs, either party may seek a different rate from the Board on a case-by-case basis."

226
The position of the EDA group was no, and Energy Probe, as Mr. Dingwall just indicated, said yes, provided -- given the safety valve, if you like, contained in the CCTA position.

227
So now, then, we get to number 4, which -- where there was an agreement of the parties. And this took some time but it was -- this is the, really, what are the appropriate terms and conditions for

a joint-use
agreement for access to the poles of electricity distribution companies? And as a subtext, subpoint,
should there be a standard form of agreement for the entire province with the provision for bilateral
negotiation of individual terms and conditions? So these are, if you like, the non-financial, bilateral
provisions of the agreement or the provisions other than the charge.

228
Positions of the -- and the parties agreed on this, and let me just read it. I think it's straightforward but
you need to follow the steps carefully:

229
"The parties agree that the terms and conditions contemplated in issue 4 can be dealt with separately by
the parties after the Board makes a determination with respect to the other issues on the issues list.
Following the Board's decision with respect to the other issues, and if the Board answers issue number 1
in the affirmative, the parties will, within four months, report to the Board progress to date on their
negotiations respecting terms and conditions and may seek such further orders or directions as may be
appropriate, including orders or directions respecting: (a) Which terms or conditions, if any, should be
mandatory; and (b), which terms are open to individual negotiations between the parties."

230
And then finally:

231
"Pending the outcome of the negotiations referred to above, CCTA, CEA, and EDA have agreed to
recommend to their respective members not to deny access or withhold permits for the sole reason that
no agreement is in place, provided that the user is paying the rate established by the Board."

232
So effectively, it gives the parties some time to try and reach an agreement, negotiated agreement.

233
And finally, and this is quite short, the last issue, number 5:

234
"How should the new licence conditions be implemented and what should be the impact on existing
contracts?"

235
"All parties except, MTS Allstream agree as follows: The new licence conditions should not impact
existing contracts except as contemplated in those contracts. The licence conditions will be deemed to
apply at the expiry of the current term of each existing contract. Where no contract existed at the time of
the decision, the licence conditions will apply immediately."

236
In addition to those -- the treatment of those five issues, you will note that, and I should flag for you, and
I believe this is Board practice anyway, but at the top of page 9, we recommend that the final argument
would be presented in writing. And at the beginning of the document, page 4, beginning of the
substantive part of the document, in the preamble, I will read this preamble:

237
"The parties agree that this settlement agreement was entered into, under the direction of the facilitator,
to assume for purposes of engaging in this settlement process and assisting the OEB that issue

number 1
is answered in the affirmative. The positions and/or agreements of the CEA, EDA, and Hydro One in
respect of issues 2 through 5 are not to be construed as their acknowledgment or agreement that
regulation of access to LDCs' poles in any form should exist."

238
That, sir, is our settlement agreement. And we --

239
MR. KAISER: Now, Mr. Brett, let me ask you a question, just to follow up on that last point you were
making. The question of whether the Board should regulate in this area is the threshold
issue; correct?

240
MR. BRETT: It is in the sense that if the Board were to recommend -- decide it would not regulate,
then these other issues --

241
MR. KAISER: Would go away.

242
MR. BRETT: -- would go away.

243
MR. KAISER: So my question to you is a matter of procedure, and I haven't really discussed this with
my fell Panel members. Should we be hearing evidence and deciding that issue first
before we drag all these economists in?

244
MR. BRETT: Well, sir, I would say no. I think in trying to answer the question, it's important to
address -- to try to -- I go back, actually, and this is sort of in a way a bit of a rerun of
motions day. I go back to my point there that in order to answer that question properly,
you do need to also look at the answers to these other questions, because they're
interrelated. And the example I used was one of the arguments that parties use against
the Board regulating, as it would be incredibly complicated and heavy-handed and so on
and so forth.

245
On the other hand, if the Board were to decide that a uniform rate were to apply, with a safety valve in
place for some egregious exceptions -- egregious application of the formula, then, you know, that really
is, in our mind at least, a very simple, straightforward thing, and it really simplifies matters rather than
complicates them. So in that sense, I think they need to be answered together.

246
And our panel, we have structured our panel to have parties, as a practical matter, with both our
professional economists and our business people on the panel, because we feel that all of the issues
should be dealt with at once. In other words, we would suggest to you that the most efficacious way to do
this is simply to have -- have the issues dealt with together. And we provide a panel that can deal -- can
address each of those issues as they relate to one another.

247

MR. KAISER: Well, you're right. We actually did canvass this at Motions Day, really, that issue.

248
Is counsel for MTS Allstream here?

249
MS. CROWE: Yes, I'm present.

250
MR. KAISER: Could you help us with respect to the position of your client on issue number 5 of the settlement agreement? Do you have a copy of the settlement agreement?

251
MS. CROWE: Yes, I do. And our position is that the use or the utility of a regulated rate diminishes if it does not apply across the board. In my contracts -- well, the poles or a monopoly asset. Many contracts were entered into in an environment that did not involve even bargaining power. And so, in the interests of regulatory certainty and minimizing any competitive impacts from uneven rates, if the Board were to determine that it is appropriate to set a standard rate or other terms of access to power distribution poles, that it should apply to all such access by all parties.

252
MR. KAISER: Is it your concern that if the existing contracts were exempted until such time as they expired, that your --

253
MS. CROWE: Sorry to interrupt, but I'm having trouble hearing you.

254
MR. KAISER: Sorry. Is your concern that if the existing contracts were exempted until they expired, that your client would be foreclosed from access in certain cases?

255
MS. CROWE: That could be the case, in certain instances, if all positions in the communication space were taken.

256
The other concern is, some of the existing agreements might have a reopener clause or a renewal clause that the pole owner could -- could try to use to continue that contract under that rate into the future. And it's possible that the contract could extend farther in the future than its normal termination point.

257
MR. KAISER: Now, as we understand it, you are the only party who's not in agreement on this point; is that correct?

258
MS. CROWE: That appears to be the case.

259
MR. KAISER: Were you at the settlement conference?

260
MS. CROWE: Yes yes, I was.

261
MR. KAISER: And do you intend to call any evidence on this issue?

262
MS. CROWE: We had not intended to call evidence. We can make a witness available to speak to this matter if you have further questions.

263
MR. KAISER: Well, I think it would be of assistance, if you have a concern -- I mean, this is an important issue.

264
MS. CROWE: Okay.

265
MR. KAISER: If you have a concern that somehow exempting existing contracts is going to disadvantage your client, we'd like to hear some evidence on it.

266
MS. CROWE: All right. We'll see what we can bring together for tomorrow.

267
MR. KAISER: Right. The Panel, of course, has had the opportunity to review the settlement agreement, as you've filed it, and now marked as exhibit, is it, E1-1 or 1.1?

268
MR. LYLE: 1.1. That's correct, Mr. Chair.

269
MR. KAISER: Before I do that, were there any other submissions on this, or has Mr. Brett accurately represented the -- we have the written document. I don't think there's any mystery as to what it says.

270
Anyone else wish to make any comments? Mr. Dingwall?

271
MR. DINGWALL: No, sir, I have no comments.

272
MR. KAISER: Right. In that event, we will accept the settlement agreement as filed by Mr. Brett on behalf of all the parties. Thank you for taking the time in the settlement agreement to work through this. I know it's a lengthy process and perhaps not that easy, but it does accommodate the Board and assist all parties in reducing the workload here. So thank you for that.

273
Mr. Brett, I guess you're up to bat.

274
PROCEDURAL MATTERS:

275
MR. LYLE: Perhaps, Mr. Chair, before that we could go through the hearing schedule.

276
MR. KAISER: Yes, if you wish. Do we have the document that the Board Secretary filed?

277
MR. LYLE: Yes, Mr. Chair. A draft schedule was circulated to the parties.

278
MR. KAISER: Could we distribute --

279
MR. LYLE: Does the Panel have copies of those, Mr. Chair?

280
MR. KAISER: Yes, we do.

281
MR. LYLE: Yes, Mr. Chair. There's a tentative hearing schedule, and it indicates that, of course, today, we're sitting for the full day; tomorrow we're intending to sit between 12 and 5; and then on Thursday between 11 and 5; and then another full day on Friday; and on November 8th, there will be a full day sitting, if necessary.

282
Perhaps, Mr. Chair, you might want to address the witness panels and the order in which they will be appearing.

283
MR. KAISER: Before I do that, Mr. Sommerville has just reminded me, you raised, and I take it it's on agreement of all parties, Mr. Brett, that you wanted to proceed by way of written argument?

284
MR. BRETT: Yes, sir. That was the idea. That was the wish.

285
MR. KAISER: I don't think the Board has any trouble with that. One possibility I wanted to raise with you: Would it be acceptable to the parties, if, in the event the Board has questions on the written argument, we can call you back for questions?

286
MR. BRETT: Yes, sir. I have no issue with that.

287
MR. KAISER: Mr. Ruby?

288
MR. RUBY: Yes, of course, Mr. Chair.

289
MR. KAISER: Ms. Friedman?

290
MS. FRIEDMAN: Yes, that's acceptable.

291
MR. KAISER: I don't know whether it will be necessary but I just wanted to caution you.

292
[Audio feedback]

293
MR. KAISER: Mr. Lyle, did you want to deal with the next issue, as to the order of evidence?

294
MR. LYLE: Yes. Of course, Mr. Chair, the CCTA panel is up first, and I understand from Mr. Brett that this is the only panel that the CCTA will be calling. I understand that Mr. Ruby has a

witness who's only available tomorrow.

295
MR. RUBY: Yes, that's right. He's flying in from Manitoba. When we made those arrangements, we were not aware it would be a half day at the time, and that seemed the most likely time when we would need him.

296
MR. LYLE: And I understand that Ms. Crowe's witness is also only available tomorrow.

297
MS. CROWE: Yes, she's available tomorrow. I see that we have November 8th scheduled now. She could also be available that day instead. But those are the two days that she would be available.

298
MR. KAISER: Counsel, I take it you have no objection if we have to shift witnesses around out of order to accommodate witnesses?

299
MR. BRETT: No, sir. I mean, we would prefer, as much as possible, to have our narrative go in, but if it need be, we can adjust.

300
MR. KAISER: Mr. Ruby?

301
MR. RUBY: Yes. We share the same concern, as much as possible, to try and stick to what's the natural order. But if it has to be adjusted, of course, that's appropriate.

302
MR. KAISER: Ms. Friedman, is that acceptable?

303
MS. FRIEDMAN: Yes, I agree.

304
MR. KAISER: Sorry, Mr. Lyle. Go ahead.

305
MR. LYLE: And then I believe, Mr. Chair, that if we're able to complete the CCTA panel today, then on Thursday we could commence with the EDA panels. I believe there's two panels, an expert witness panel and also the utility executives that were referred to previously.

306
MR. BRETT: Mr. Chairman, perhaps I did jump a little prematurely there. I failed to advise you and Mr. Lyle that two of our expert witnesses do have to finish up tomorrow. They're here today and tomorrow, but they would need to finish tomorrow. And one of our panel is available -- one other member of our panel, business member of our panel, is available today and tomorrow, but not on Thursday.

307
MR. KAISER: Who is that?

308
MR. BRETT: That's Mr. John Armstrong from Rogers Cable. And our expert witnesses are Mr. Paul Glist and Ms. Patricia Kravtin, who can't be available beyond tomorrow. So

we're okay
to the end of tomorrow. I don't know how much cross-examination people have.

309
MR. KAISER: Your experts are here today, you say?

310
MR. BRETT: They are, sir. They're all right here on this panel now.

311
MR. LYLE: Well, perhaps, Mr. Chair, we could assess where we are by the end of today.

312
MR. KAISER: Right. Well, I guess we should get on with it if we're going to get through these
witnesses. Any other scheduling matters?

313
MR. LYLE: No, I don't believe so at this time, Mr. Chair.

314
MR. BRETT: Mr. Chairman and Panel, I'd like to introduce the CCTA witnesses, after which they
could be sworn. Perhaps I should just go through and name them for you first, as a group.
And I'll start closest to you on the end, on your right, is Mr. Don Ford from D.A. Ford &
Associates. He's one of our expert witnesses. Next to Mr. Ford is Ms. Patricia Kravtin,
an economist and expert witness. Next to Ms. Kravtin is Mr. Paul Glist, another expert
witness. Next to Mr. Glist is Lori Assheton-Smith, who's the senior vice-president and
general counsel of The Canadian Cable Television Association, and she'll serve as a, sort
of, informal quarterback of the panel to help questions as to who might be appropriate to
answer particular questions.

315
Coming along here on the left, Mr. Roy O'Brien, executive director of the Ontario region of the CCTA.
Next to him, Mr. John Armstrong, director of municipal and industry relations, Rogers Cable Communications Inc. And finally, last but not least, just next to me, Mr. Steve Greenham, who is the
HFC rebuild manager for Cogeco Cable Inc. in Ontario.

316
So that's our panel, and perhaps they could be sworn.

317
CCTA PANEL 1 - FORD, KRAVTIN, GLIST,
ASSHETON-SMITH, O'BRIEN, ARMSTRONG,
GREENHAM:

318
D.FORD; Sworn.

319
P.KRAVTIN; Sworn.

320
P.GLIST; Sworn.

321
L.ASSHETON-SMITH; Sworn.

322

R.O'BRIEN; Sworn.

323

J.ARMSTRONG; Sworn.

324

S.GREENHAM; Sworn.

325

MR. KAISER: Mr. Lyle, has the CCTA evidence been marked?

326

MR. LYLE: You're talking about the curriculum vitae, Mr. Chair?

327

MR. KAISER: No, the prefiled evidence.

328

MR. LYLE: Yes, the prefiled evidence is all received. Tab B.1 in the exhibit list, and the reply evidence is at B.3.

329

MR. KAISER: I take it, Mr. Brett, you're going to deal with your reply evidence at the same time as the direct evidence?

330

EXAMINATION BY MR. BRETT:

331

MR. BRETT: Yes, I'm going to deal with that at the same time, and I was going to just take each witness through the evidence.

332

And starting with you, Mr. Ford, I understand that you prepared your evidence as Appendix C to the CCTA's prefiled evidence that was filed last December.

333

MR. FORD: That's correct.

334

MR. BRETT: And you adopt that evidence? Was that evidence prepared under your direction or control?

335

MR. FORD: It was.

336

MR. BRETT: And you adopt that in evidence this proceeding?

337

MR. FORD: Yes, I do.

338

MR. BRETT: And moving to you, Ms. Patricia Kravtin and Mr. Paul Glist, you two collaborated in the preparation of the CCTA reply evidence?

339

MR. GLIST: Yes.

340

MS. KRAVTIN: Yes.

341

MR. BRETT: And do you adopt that evidence as your in evidence this proceeding?

342
MR. GLIST: Yes, we do.

343
MR. BRETT: Do we have an exhibit number for the reply evidence, Mr. Lyle?

344
MR. KAISER: We do.

345
MR. LYLE: Yes, we do. It's B.3, Mr. Brett.

346
MR. BRETT: Now, Ms. Assheton-Smith, you were responsible, along with the three gentlemen to my left, for the preparation of CCTA's principal evidence and many of the interrogatory responses; is that right?

347
MS. ASSHETON-SMITH: That's correct.

348
MR. BRETT: And that evidence was prepared in collaboration among you and these three individuals?

349
MS. ASSHETON-SMITH: That's correct.

350
MR. BRETT: And you adopt that evidence as the CCTA's evidence in this case?

351
MS. ASSHETON-SMITH: Yes.

352
MR. BRETT: And Mr. O'Brien, you also collaborated in the preparation of the CCTA's evidence-in-chief, including IR responses?

353
MR. O'BRIEN: Yes.

354
MR. BRETT: And you adopt that evidence, you adopt that as the CCTA evidence in this case?

355
MR. O'BRIEN: Yes.

356
MR. BRETT: Mr. Armstrong, you too collaborated in the preparation of the CCTA principal evidence, including the IR responses?

357
MR. ARMSTRONG: That's correct.

358
MR. BRETT: And you adopt that evidence as the CCTA's evidence in this case?

359
MR. ARMSTRONG: Yes.

360
MR. BRETT: And finally, Mr. Greenham, you collaborated in the preparation of the CCTA's principal evidence, including IR responses?

361

MR. GREENHAM: Yes.

362

MR. BRETT: And you adopt that evidence as the CCTA's evidence in this case?

363

MR. GREENHAM: Yes, I do.

364

MR. BRETT: Thank you very much.

365

Ms. Smith, would you please state for the Board a summary overview of the CCTA's evidence, please.

366

MS. ASSHETON-SMITH: Thank you.

367

Mr. Chair, Board members, and Staff, on behalf of the CCTA I'd like to thank you for the opportunity to appear before you today. With your indulgence, I'd like to make a few brief introductory remarks to assist the Board, Staff, and intervenors in understanding our position and proposal.

368

Essentially, CCTA's position in this proceeding can be summarized in three points. One, LDCs are monopoly suppliers of essential facilities. As such, regulated access to these facilities is both appropriate and necessary. Two, CCTA members are fully prepared to pay their fair share of the costs of a pole, but in our view a charge represents a fair share if it is cost-based, if it reflects our actual use of the communication space plus our proportionate share of the buried and clearance space, and if it is applied on a per-pole basis. Three, a uniform charge is fair, administratively efficient, and appropriate in the circumstances of this case. Now, I'd like to briefly address each of these three points.

369

First, I want to emphasize that CCTA and its members have been negotiating pole access with LDCs for almost a decade, with little or no success in reaching final agreement on an appropriate pole useage charge. That's not to say that we haven't made great strides in reaching agreement on other terms and conditions, and I'm pleased to say that we have, thanks to the efforts of our respective negotiating teams. But we're here today because negotiating a useage charge with a monopoly supplier is a difficult and ultimately losing proposition.

370

In light of the unequal bargaining power between the two parties, and given the demonstrated ability of the LDCs to abuse their market power, we submit that this Board's intervention is warranted and, indeed, required. Mr. Armstrong, Mr. Greenham, and Mr. O'Brien, have all been directly involved with LDC negotiations for a number of years, and are here to answer any questions about those negotiations as well as any industry-specific questions.

371

Second, I'd like to make it clear that CCTA members are fully committed to paying a fair share of the cost of the pole. But in our view, this effectively means three things: A, it means a charge that is cost-based which provides for the full recovery of incremental costs and a contribution toward common

costs; B, it mean it is contribution toward common costs reflects our actual use of the communication
space plus our proportionate share of the buried and clearance spaces. Under this approach, the entire
cost of the pole is recovered.

372
(c) It means that the pole useage charge is applied on a per-pole, per-user basis. This is necessary because
this is how costs have been determined. To apply the per-user charge to each attachment, which is what
the LDCs are suggesting that you do, would result in a significant overrecovery of costs. A
per-attachment charge could, of course, be calculated if costs were allocated in such a fashion, but this
data is not on the record of this proceeding, and collecting it would be an onerous and time-consuming
task, likely requiring a pole-by-pole audit of existing pole useage. Mr. Ford, Ms. Kravtin, and Mr. Glist
will speak to questions related to these and related issues.

373
Finally, Mr. Chair, it is CCTA's position that this Board should fix a charge-per-pole useage that would
apply uniformly across the province to all LDCs. We believe this is appropriate in light of the significant
transaction costs associated with negotiating multiple charges on a system-by-system basis. These costs
would impose a substantial administrative burden both on the parties and on the Staff and the Board. It
would also require more frequent intervention by the Board to resolve disputes where data is unavailable
or unreliable.

374
Moreover, it is apparent from a review of the evidence in this proceeding that the available pole cost data
is, in fact, unreliable and incomplete. In the absence of consistent and reliable individual LDC cost data,
we submit that the appropriate approach is to use representative cost data derived from the best available
evidence to calculate a uniform charge.

375
In short, we believe a uniform charge is the fairest, most efficient, and, in fact, most light-handed
approach in the circumstances. At the same time, where the application of a uniform charge would result
in significant, under- or overrecovery of costs, our recommended approach would permit either party to
seek a different charge on a case-by-case basis. Of course, this assumes that reliable costing data would
be available to justify a departure from the uniform charge.

376
We would all be pleased to respond to questions related to this aspect of our application.

377
So, to recap, our position in this proceeding is really quite simple and is based on three fundamental
submissions. Poles are monopoly assets and must be regulated. Costs of pole useage should be shared
among all users on the basis of actual use of the usable space, and proportionate share of the buried and
clearance spaces. And finally, a uniform charge based on representative data is fair and administratively
efficient.

378
Thank you for the opportunity to outline our position, and we look forward to your questions.

379

MR. BRETT: Thank you very much, Ms. Assheton-Smith.

380
Mr. Chairman, our panel is now available for cross-examination.

381
MR. KAISER: Thank you.

382
MR. LYLE: Mr. Chair, perhaps it would be an opportune moment to take the morning break. I understand that some participants in the hearing are pregnant and would need the break.

383
MR. KAISER: Thank you. We'll take the morning break. Back in 15 minutes, if that's acceptable.

384
--- Recess taken at 10:52 a.m.

385
--- On resuming at 11:22 a.m.

386
MR. KAISER: Please be seated. Did we have any agreement as to the order of cross-examination?

387
MS. FRIEDMAN: Yes, I believe we did. I'm going to proceed first, followed by Mr. Ruby for the CEA, then followed by Mr. Dingwall on behalf of Energy Probe, and then I believe Mr. Lokan. No questions? Mr. Lokan won't have any cross-examination questions.

388
MR. KAISER: Fine. Proceed.

389
CROSS-EXAMINATION BY MS. FRIEDMAN:

390
MS. FRIEDMAN: Good morning, panel. My name is Kelly Friedman, and I'm counsel to the Electricity Distributors Association. In an effort to keep the transcript as clean as possible, I intend to direct questions to a particular witness. Of course, if for some reason you don't feel like you're the appropriate person to answer, I'm happy for Ms. Assheton-Smith to rejig who will answer. I just thought that it would be easiest for transcript purposes that I direct the question to a particular witness.

391
I'm going start my discussion this morning discussing economic concepts with Ms. Kravtin. So, until I indicate otherwise, the questions are going to be for you, Ms. Kravtin. And I'd like to begin with a few questions just to understand your background.

392
Ms. Kravtin, you've consulted on electricity and regulator matters for many years; is that correct?

393
MS. KRAVTIN: Yes, although my primary area of expertise is in telecommunications and cable matters.

394
MS. FRIEDMAN: And you've testified in various proceedings in various parts of the United States

and elsewhere.

395
MS. KRAVTIN: Yes, that is correct. I've testified extensively before, close to, I think, 30 state jurisdiction, as well as the FCC, and I've also put in testimony before the CRTC and I believe the Manitoba Board as well.

396
MS. FRIEDMAN: And you're familiar, to some degree, with electricity markets in various parts of the United States and elsewhere?

397
MS. KRAVTIN: I have served as an expert witness in some electricity matters, yes, although the subject of my testimony dealt with use of certain facilities by telecommunications companies, in particular. I've done some work, I should say, in cost benchmarking of electric utilities as well.

398
MS. FRIEDMAN: You're aware, no doubt, that the United Kingdom has gone through electricity deregulation.

399
MS. KRAVTIN: Yes, I am aware generally of the moves toward electricity deregulation throughout the U.S. and other countries, yes.

400
MS. FRIEDMAN: Okay. Are you aware of a Mr. Stephen Littlechild who was the chief regulator in the United Kingdom during the course of that deregulation?

401
MS. KRAVTIN: I'm familiar with his name, although I've not had encounters, you know, with him personally. So if you could clarify, perhaps, the nature of my familiarity that you're asking for that would be helpful.

402
MS. FRIEDMAN: Certainly. You might know him as Professor Littlechild from your economics training. Do you understand him to be a regulatory economist and then a regulator? Professor Littlechild? Or you're simply not familiar with him, with his work?

403
MS. KRAVTIN: If you could identify maybe, perhaps, certain pieces of his work? Again, I'm familiar with the name, but -- I can't say that I could be familiar with all his work, no.

404
MS. FRIEDMAN: Perhaps you would be familiar with his work on price cap regulation? He was one of the originators of price cap regulation in the performance-based regulation context for electricity and telecom.

405
MS. KRAVTIN: Yes, I am familiar that he's done some work in that area.

406
MS. FRIEDMAN: Okay. Would you agree with me, Ms. Kravtin, that problems of cost allocation have received considerable attention from economists.

407
MS. KRAVTIN: Yes, I would agree, certainly, that cost allocation, particularly in the regulatory field, has been something that economists have looked at throughout the years, yes.

408
MS. FRIEDMAN: And would you agree that game theory is the larger area of economics which deals with bargaining and negotiation in cost allocation?

409
MS. KRAVTIN: Well, I would agree that certainly game theory is relevant to that subject, but I think there is a host of other institutional and regulatory historical matters that have borne on the issue as well. I wouldn't limit it just to game theory.

410
MS. FRIEDMAN: Given that you're familiar with game theory, I take it you would agree that some of the central ideas in co-operative game theory started out in the theoretical literature on cost allocation. Are you familiar with any of the theoretical literature on cost allocation, as it has been applied by regulators?

411
MS. KRAVTIN: Yes, certainly throughout my education in economics I've had my share of theoretical study. So I am aware of, you know, all aspects of economic theory that bear upon the issue of regulation. Again, I don't think it's just game theory, but a host of other economic regulation of industry that was certainly come to bear on the regulatory process.

412
MS. FRIEDMAN: In your report, particularly at page 2, you stated, I'll quote, it's at lines 2 to 4, that:

413
"Drs. Mitchell and Yatchew take issue with this approach, not in the name of economics but in the name of fairness."

414
I just want to touch on that concept of fairness for a moment. Do you agree that leading economists in the field of cost allocation have identified three major themes, those themes being efficiency, equity, and incentives, being closely intertwined with cost-allocation principles?

415
MS. KRAVTIN: Yes, I would agree that those factors you've identified certainly come into play in evaluating cost allocation.

416
MS. FRIEDMAN: So, just to confirm with you, you agree that cost allocation can involve consideration for fairness?

417
MS. KRAVTIN: Yes, I would agree. Although, as a economist, I think that we really need to look at, first, the benchmark of efficiency, and then consider the other issues, because those issues are more subject to subjective interpretation. So I believe that first you look at -- as an economist, what we have to offer, I think, is to look at pure economic principles of efficiency, and then move on to consider the other

aspects which we economists can address, but as well as others from other disciplines.

418
MS. FRIEDMAN: Are you familiar with a text entitled: "The Handbook of Game Theory"?

419
MS. KRAVTIN: I can't say that I'm familiar with that particular text, no.

420
MS. FRIEDMAN: Okay. What about just one other text by way of background: "Handbooks in Economics," published by Elsevier/North-Holland. Are you familiar with that series of handbooks? Handbooks in economics?

421
MS. KRAVTIN: No, I can't say that I have. It could be, if you presented the book, I'm sure at some point during my education I may have perused it, but it's not one of the ones on my shelf at the moment.

422
MS. FRIEDMAN: Thank you. Moving from your background, a point made -- and going specifically to cable attachments. A point made in your report at page 3 is that:

423
"Electric utility facilities make far greater use of poles, and thus have far greater impact on poles than cable facilities."

424
And I'd like to just talk to you a little bit about the impact of electricity versus cable facilities on poles.
While you state that electric utilities make far greater use of poles, would you agree that the cable company attachments require some height above minimum grade? So they require some clearance space?
Perhaps Mr. Glist could speak to that, it's not a economics question per se.

425
MR. GLIST: Yes, I'm happy to take that. We did collaborate on the report, so -- in this area, there's no doubt that everyone is trying to work towards the sharing of the pole. And it is correct that communications users and electric users require certain clearances. I think the point that we were trying to make at this page of the testimony that you're citing is that the relative use made of the pole by electric facilities is greater than that of cable television facilities, in that power lines need to be higher above roadsides than cable, they need to be higher above pedestrians than cable. You've got to rack your primary above your secondary. They're heavier. That leads to higher poles, deeper poles, higher class of poles, more cost. And so we were -- we were trying -- this, of course, is the summary of the testimony. But we were trying to introduce the concept hat one looks to relative use of the pole rather than the single fact that people need to elevate facilities above ground.

426
MS. KRAVTIN: I think I could add to that from the economic perspective, and what -- again, as Mr. Glist mentioned, this is a summary, so we could go further into the text

later on.

427

But we're trying to frame this from the economics perspective, again, in terms of applying principles of efficiency and cost causation to the development of a rate formula to apply here. And from the standpoint of economics and efficiency, you try to look to those costs that can be identified as relating to the cost causation, costs that would not be incurred but for the presence of the attacher. And so you start looking at criteria as to identifying who you can attribute the cost to.

428

And I think that's what we are looking at here, that electric you can say, and there's a history in regulation that says these costs are really incurred for the purpose of supplying the core utility service, not for the additional attachers. And that's what economics looks at in terms of the efficiency and cost-causation aspect.

429

And when that happens, then you can assure that the utility and its customers are no worse off because they're bearing the costs that their use and utility customers cause, and the other attachers can then be attributed based on their use.

430

MS. FRIEDMAN: Thank you. And perhaps I could stay with Mr. Glist for the next few questions.

431

Just to understand the relative uses of the pole, or the relative impact on the poles that we started with. If a cable company's requirements are 15 percent of the dedicated space on the pole, so if 15 percent of the above-ground space is for their cable attachments, does that mean that a pole can be put up that's 15 percent the height of a power pole, if it was just for cable?

432

MR. GLIST: Well, actually, what I've been trying to say is that the poles are existing facilities that have been erected to meet the needs of an LDC and its joint owner, ILEC; and that when a cable operator comes along, if there's surplus space, then that surplus space is utilized for the cable attachment. That could be measured at 15 percent. If the space is not available, then the cable applicant goes through the make-ready process to pay for a new pole, taller pole, that can accommodate the needs of the cable company, and the title to that pole is ceded over to the utility pole owner, and then the cable operator pays rent, okay?

433

So, up front, you're addressing the incremental costs, which is sort of the economically efficient, no-subsidy point. And now we're talking about, what more should be in a recurring charge in order to make a full and fair contribution towards common costs. And what we're trying to say is that, if you measure the use of the -- the space used on the pole for horizontal communications and power conductors as 15 percent assigned to cable, and we know that cable is attaching one strand of a communications line

and there's a lot more power facilities than that, then you take that proportionate use and you use that as a
allocator for common costs.

434
So no one is saying that there is a pole that's, you know, five feet high, you know, and that that's
theoretically a pole for one party and there's a pole that's ten feet high and that's theoretically a pole for
another party. We're trying to work with the reality on the ground, that there's a pole there. It's got surplus
space or it doesn't. If it doesn't have surplus space, we pay to make it.

435
MS. FRIEDMAN: But if there wasn't a pole in a position where a cable company needed one, you're
not saying, are you, that the pole that they could erect, if they had the permission
to do so, could be 15 percent the size of a power pole?

436
MR. GLIST: Well, actually, we're not in a real position to erect that hypothetical pole to begin with.
We start from the same premise that CEA starts from in their testimony, that no one
really wants to have multiplication of poles or to have cable start building their own
poles. So the capital contribution that we're making up front for make-ready is a way of
erecting that pole.

437
Am I answering the question?

438
MS. FRIEDMAN: Okay. You do agree, though, that poles have to be replaced eventually?

439
MR. GLIST: If a pole can get -- a pole can get hit by a car. It could need to be renewed at the end of its
life. Sure.

440
MS. FRIEDMAN: Right. And not going too much --

441
MR. GLIST: It's true with or without the presence of a third party attachment.

442
MS. FRIEDMAN: That's right. And there could be a situation where a cable company needs a pole
but there isn't a pole currently there?

443
MR. GLIST: In almost all cases, there is a pole there. And my understanding is that, sort of, the reality
of this hearing is that we're talking about charges for this vast suite of embedded poles
out there, rather than the hypothetically non-existent pole.

444
MS. FRIEDMAN: On page 3 of your report, you discuss a real estate analogy. And I'd like to put a
real estate example to you to get your reaction, Mr. Glist and/or Ms. Kravtin, and
you're both welcome to comment on this.

445
And it's just the example of a shopping centre. If Sears, for example, occupies 15 percent of

the floor
space of a shopping centre, would you agree with me that it might be reasonable that Sears would use
about 15 percent of the parking spaces of the shopping centre?

446
MR. GLIST: I actually wouldn't know that. And I think the reason that we used the elevator example
was, we were working from situations that we actually knew; that if you've got -- you
know, if you're renting one floor of an 11-storey building and ten floors are for another
party, you don't expect to pay one-half the cost of the elevator.

447
MS. FRIEDMAN: Okay. So, Mr. Glist, just in the course of your legal practice and the business
advise you give, I take it you're not familiar with how commercial real estate leases deal with dividing the expense of a parking lot, for example, among tenants?

448
MR. GLIST: No, I can't say that I'm familiar with parking lot allocation.

449
MS. FRIEDMAN: Okay. Mr. Glist, would you agree that cable companies, in order to accommodate
their attachments, require some part of the pole to be buried? And that's just a
given.

450
MR. GLIST: Well, any pole that is erected would typically have 10 percent of its length plus 2 feet
buried for stability, so that's true no matter who owns or sets the pole. But the taller poles
used to accommodate the secondary and primary line have to be set more deeply than
shorter poles that would satisfy communications needs.

451
MS. FRIEDMAN: Okay. But the communications -- the poles for communications lines has to have
a buried portion.

452
MR. GLIST: Any pole --

453
MS. FRIEDMAN: Any pole.

454
MR. GLIST: -- would need a buried portion.

455
MS. FRIEDMAN: Ms. Kravtin, from the economics side, given that a cable company needs the pole
to be buried and requires some clearance, which I think Mr. Glist has just made clear, from an economics perspective, would you agree that a cable company causes some of the cost of the buried or clearance space?

456
MS. KRAVTIN: No, I would not. As a general proposition, again, what we're talking about is use
of embedded facilities that have been placed historically to serve the core utility
businesses of the joint owners, the electric and telephone industries. So, again,
we're looking at it from the perspective of the reality that exists and trying to
examine cost causation, based on that existing -- that's what economics, you

know, looks at.

457

And the issue of subcosts and cost causation, you know, those are integral concepts of economic theory.
And that underlies why, for economic efficiency, and as your own economic experts have realized, that it
is efficient from an economic standpoint that the incremental costs be covered when you have an existing
facility in place.

458

MS. FRIEDMAN: Can we agree, Ms. Kravtin, at minimum, that at least some of the costs of the buried portions are common to both the electricity attacher and the cable attacher, or the electricity owner of the pole and the cable attacher. Some of the buried and clearance portions are common links?

459

MS. KRAVTIN: Well, I think we can agree that those types of costs are classified as common costs, which are then subject to appropriate allocation, which I believe is the subject of this hearing.

460

MS. FRIEDMAN: Staying with you, Ms. Kravtin, I'd like to discuss a little bit the economies of scope issues, and I'll try not to use too many economics catch phrases. Do you agree that, in economic terms, the provision of pole services to two or more companies from a single pole is less costly than the use of separate poles by each company, or from an overall societal perspective? The cost of one pole is less than the cost of two poles, if each company did it separately.

461

MS. KRAVTIN: Well, I think it's hard to answer in the abstract your hypothetical, but I certainly can agree in principle that there are economies from sharing those resources, and that's part of what I believe underlies the policy to try to avoid the duplication of facilities. In fact, the reality of the market is that, for all intents and purposes, a third party such as cable could not go out and duplicate those facilities. So, separate and apart from, you know, the economic theory, we have to address the practical reality that they could not duplicate those poles. And again, I think that's a big issue in this case, and that has to enter into the allocation formula. That they're not in a position to go out and duplicate and build those facilities.

462

MS. FRIEDMAN: Okay. Do you agree that -- let's look at the concept for a second of incremental costs -- that the incremental costs of cable attachments equals the total costs of the pole serving both electricity and cable, less the costs of the pole serving just electricity? Would that give us the incremental cost of cable attachments?

463

MS. KRAVTIN: I think you've left off the other joint owner, which is the telephone utility, as I understand it, which has an existing joint-use agreement, and historically was considered in the build-out of those poles. So if you're trying to look at a definition of the incremental costs to cable, generally you look at all the potential occupiers of that pole.

464

MR. GLIST: And I'd also add that, at least I didn't hear in your question, a recognition of the make-ready phase of attachment. Where if the pole does not have surplus space, in other words, if the embedded facility built for utility and other purposes did not have surplus to accommodate cable, if it wasn't equal to the same cost of one -- for cable, then the cable company pays to upgrade that facility to the one that meet its needs.

465
MS. FRIEDMAN: Right, and you consider, Mr. Glist, that make-ready cost an incremental cost?

466
MR. GLIST: Yes, I do.

467
MS. KRAVTIN: Or it should be. In theory, it should be an incremental cost. In practice, what we've seen over the years is that utilities have made some attempts to flow-through indirect costs as part of that calculation. But in theory, that's what they should be limited to cover.

468
MS. FRIEDMAN: Okay. So just so we can simplify it, Ms. Kravtin, forgetting about any telephone attachment, suppose there is simply electricity and cable on a pole. The incremental costs of the cable attachments would be, then, the total costs of the pole serving both the electricity and cable less the costs of the pole serving electricity, and that way you would get incremental costs for cable, whether you deal with them in terms of make-ready costs or otherwise?

469
MS. KRAVTIN: Excuse me, please.

470
Again, let's try to clarify that what we're talking about, now, is trying to look at a theoretical definition that you would find in the economics literature about how to define incremental costs when there are multiple entities involved. Because there are particulars, as some of my colleagues may wish to address. Mr. Glist talked about make-ready, Mr. Ford is talking about the existence of support structures, so if we confine our discussion right now to the theory, and then let my colleagues perhaps talk about the realities, which I think is of interest to the Board as well.

471
You know, generally when you have, you know, multiple parties involved in trying to isolate what the pure incremental cost is of a second or third or fourth entity, then you would look at the total costs and then you would subtract the costs, basically, that would exist but for the other attacher, and that's an important concept. I think it underlies the formula that we are proposing, is trying to isolate the "but for" costs of cable, the costs that would not exist but for cable looking to occupy existing facilities.

472
MS. FRIEDMAN: You mentioned one of the realities on the ground is that poles tend to be there. The question is, how cable can get access and at what cost? So if a company builds and installs a pole with the expectation of subsequent tenants coming along, do you agree that some of the costs of serving those tenants are incurred

whether or not a tenant ever arrives?

473
MS. KRAVTIN: Excuse me for a minute.

474
Again, in a hypothetical situation where an entity is billing out, you know, in the case of a shopping centre or some other, you know, apartment building, where the business is to take on tenants, certainly that's part of their business plan. But again, to bring it back to what we're discussing here, which is the existence of this infrastructure that was built to provide the core utility services to the electric and the telephone companies, where they have joint-ownership agreements, and now cable is looking to come and, consistent with policy recommendations that duplicate poles are not a practical reality or in any way desirable to the society, that, you know, we're looking to see what their efficient and fair share of the costs would be.

475
So I disagree with the premise of your question that these poles were built for tenancy purposes, because that's not what the reality and history demonstrates.

476
MR. GLIST: And I would just add, sort of, that the practical reality that I'm familiar with is that the poles come in 5-foot increments. And so it's common that there is surplus space just as an incident to the use of standard heights of poles. But the fact that the cable industry has to spend millions of dollars, I think that's the number from the interrogatory responses, in make-ready is a clear indication that their needs are not sought -- they're not accommodated up-front in anticipation.

477
And I would also add that I don't see this situation as one presenting risk to the pole owners, because the cable operators don't really have anywhere else to go. The municipal authorities don't want them to build their parallel pole plant, that's why we're, sort of, married at the hip with you.

478
MS. FRIEDMAN: Ms. Kravtin, again a question, and I'd appreciate an answer from an economics perspective. If an LDC today is deciding to or is rebuilding its pole line, or into a new development, is it preferable -- from an economics perspective, is it preferable to society to have the LDC build the pole now, tall and strong enough in the first instance to accommodate tenants, or to wait until the tenant arrives and deal with it in terms of make-ready?

479
MS. KRAVTIN: Well, I think, and I think another member of the panel may address this operationally, that it's in the distributor's interest and need to serve its core utility customers to build the pole tall enough and strong enough to accommodate the provision of its own services in a safe manner.

480
MS. FRIEDMAN: But what about the LDC who's making the decision: Should they add an extra five feet to accommodate a potential tenant? Is it preferable from a societal perspective for the LDC to put that five feet up initially or to simply wait to

see
if a tenant comes along and needs an extra five feet?

481
MS. KRAVTIN: Well, you know it's interesting you raise that because this ties back to the reality
of make-ready.

482
I think from the electric distribution company's perspective, since it can subject the cable company to
make-ready, I'm not sure from its perspective that it really matters. Now, if you're looking from a societal
perspective, you know, I think, for a host of reasons, you know, it might be better to put that pole in.

483
But again, I think they're looking, as I understand it, to satisfy their own core utility requirements, which
would involve certain height and weight requirements. They will get recovery from the cable companies
through the formula we are proposing, and with the addition of make-ready, if it turns out to be the case.
And again, you're talking about the subset of new poles. We're really dealing here with recovery for the
overwhelming majority of poles that are embedded and in place.

484
MR. GLIST: And I would also suggest that -- I would expect that the utility might have joint
ownership obligations to ILEC, to place communications space on that pole for the
ILEC's purposes in new construction.

485
MR. FORD: I was going to chime in on that point exactly. I would expect that with the joint-use
arrangements that are in place between the LDCs and the incumbent telephone companies, which we acknowledge are not the subject matter before this Board, nevertheless they have an obligation, in order to maintain their ratio of ownership under
those arrangements and subject to those agreements, to provide for a space on the pole
for use by the incumbent telephone company; and, of course, it works vice versa, so that
the incumbent telephone company can maintain its ratio as agreed.

486
MS. FRIEDMAN: Perhaps I can put the question -- I apologize, I can't really see their faces. Mr.
Greenham and Mr. Armstrong are representatives from Cogeco and Rogers.

487
So from -- I can get, perhaps, the perspective of, the point of view of the cable companies themselves.
From the perspective of the cable companies themselves, would it be preferable for the LDCs to build a
pole of sufficient height to accommodate the cable attachments, or would you prefer to have a pole which
isn't big enough and then pay make-ready costs?

488
MR. GREENHAM: I think it's a business decision by the LDCs as to whether or not they're going to
allow that space -- I believe it's a business decision as to whether or not that
space would be available on behalf of the LDC.

489
I have a specific example of a crossing at the 407 highway in Burlington where the Burlington Hydro did

not build sufficient space, and as a result we ended up paralleling that section with a crossing. And that
was about three years ago. That is in evidence as well.

490
MS. FRIEDMAN: Okay. And if you don't have a view on this, that's fine. What I'd like to
understand is, if there's a preference from the cable company's perspective as to
whether the pole is already there, high enough, strong enough, with whatever you need to accommodate your needs, or the alternative is preferable, which is to
have a pole which simply accommodates electricity and you pay for your needs by way of make-ready costs. Does the cable company have a preference?

491
MR. GREENHAM: Our preference would be to supply services to our customer on a timely basis,
and having that space already available would certainly provide us to be able to
service customers, assuming that there's no make-ready costs for any safety issues or anything like that, that we would be able to timely satisfy the needs of
our customers.

492
MS. ASSHETON-SMITH: I'd like to just chime in on this point. It's kind of -- you ask what our
preference is on these matters, but the reality is we're not usually given that option. We're not asked whether we would prefer to have a pole built to our specifications or whether we'd prefer to have make-ready. That issue is usually given to us as a de facto requirement of gaining access to the pole. And I think that's really the key issue here.

493
MS. FRIEDMAN: Okay. Well, perhaps it will become clearer. I understand the position taken by
the members of the panel with respect to -- in the vast majority of cases, poles
are there, and we're dealing with poles that are there.

494
What I'd like to talk about now is incenting the behaviour of LDCs going forward, because every pole has
a certain lifespan, poles have to be replaced, and LDCs, over the coming years, are going to have to make
decisions as to what poles they put up. And I understand, from your position, that might be a little bit
theoretical, because your focus is on poles that are currently in place. But there's no question that LDCs
have to make investment decisions with respect to purchasing pole assets. So I'm going to ask a few
questions about that, and maybe where I'm getting at will become clearer.

495
Ms. Kravtin, one of the things you say at page 2 of your report, and I think this is consistent with what
you've been telling the Board here, is that -- I'll quote it for you:

496
"There is no market for pole space, nor any need for economic cues to guide optimal pole investment.
Even at far lower pole rental rates, electric utilities have not been deterred from investing in the optimal
amount of pole plant for their own uses, and cable operators have not overconsumed pole space."

497
That being said, Ms. Kravtin, do you accept that when an LDC is deciding to install a pole - it's replacing
a pole line, perhaps, that has deteriorated over the years - and it's deciding how high to

build the pole,
that it might consider whether or not it will recover the costs of a higher pole?

498
MS. KRAVTIN: Well, again, I think this has been discussed by myself and other members of the panel. I believe the LDC makes that decision based on its own provision of services to its own, you know, core utility services, as well as the other -- the joint owner in this case, Bell Canada. So it's unclear to me, and based on the evidence that I've seen and my experience with cable operators over the year, I don't think the decision-making framework of the LDC is based on the cable company at all.

499
MR. GLIST: And I would add that, at least in my experience, what I've been told by electric utility companies in the U.S., is that their needs for higher loads and to drop in more transformers and even to create space for their telecom affiliates has driven them to grow the pole for their own needs, so that routinely they would place a 45 or a 50, whereas, if you rolled the clock back, they might have used a 40, 30 years ago. But that's not for the needs of the cable company.

500
MS. FRIEDMAN: You do understand, though, that in this province, there are poles which are owned solely by LDCs and not jointly owned with the telephone companies? Do you agree with me there?

501
MS. KRAVTIN: It certainly may be the case. I have not seen those exact numbers. I know that generally the 60/40 joint-use arrangement with the incumbent local exchange company is in place. But certainly there may be situations where there are electric-owned poles solely, and telephone-owned poles.

502
MS. FRIEDMAN: When this Board is setting a rate or a methodology for determining a rate, is it your position that the Board should not consider the possibility that an LDC's investment decision, when it's deciding what pole to put in the ground, might be affected by its perceived ability to recover the costs of that pole? That this Board ought not to consider incenting LDC behaviour?

503
MS. KRAVTIN: Well, I think certainly the Board should take into account the impacts of its decision on the LDCs, its customers, and I think the larger Canadian citizenry. But I think that's not -- I think the issues that we address in terms of our recommendation for the formula certainly would provide the correct -- the correct incentives. I think the formula proposed by the distributors provides an incentive to basically extract monopoly rents. And I think that is the core reason for economic regulation, and why we're here is that the distributors are in the position to extract those rents, and those have very perverse incentives for all stakeholders and really should not be permitted as a matter of economic and public policy.

504
MR. GLIST: And if I could add. I don't mean to be overly practical here, but the presence of the make-ready regime is the answer to any concern that you might have over-incentives, because if you made the business decision as an LDC to invest in a pole that

might be five foot lower, you would still be able to accommodate that next applicant for the make-ready process. So I don't think that -- I mean, there has been no dysfunction in the incentives to install poles that I've ever encountered, and I don't think there's anything in our proposal that would serve as a disincentive for you to meet your business needs, and for us to continue to share surplus space.

505
And so, if I go back to your first principles, since the proposal is well above incremental costs, which is the efficient economic one, and it is based on proportionate use, which is our view of fairness and equity, and the incentives are already taken care of through the terms and conditions that have been agreed upon, to me that says, you know, we're there. You do a proportional use allocation of common costs and you're done.

506
MS. KRAVTIN: And I might clarify, that I think the quote to our report that was at the foundation of this line of cross-examination was certainly, in part, based on our experience in the States where the pole rental rates are considerably lower than exist, or certainly than as proposed by the LDCs. And we're certainly observing, you know, well-functioning, I think, pole deployment decisions on the part of the LDCs.

507
MS. FRIEDMAN: This Board, in setting out for the first time in Ontario a regulatory framework for access to take place to LDC poles, should this Board be ensuring that there is an incentive for LDCs to construct smaller poles so that it will be assured of recovering its costs through make-ready costs when a cable company wants to attach? Should the Board be creating that incentive for the LDCs to build smaller poles?

508
MR. GLIST: Frankly, I think that there is a great deal to be learned from the example of sister regulatory tribunals that have concluded that the allocation of common costs based on proportional use satisfy all of the concerns, including appropriate cues or incentives and appropriate cost recovery.

509
So I don't think that it is -- that regime has been developed by, you know, a dozen North American regulators over 20 years and hundreds of cases and it works. And because it works, there's a good reason for CCTA to recommend its adoption here. And I don't think that it could be faulted for sending the wrong cues or setting the wrong incentives.

510
MS. KRAVTIN: And again, I think this was addressed earlier, you know, that the LDCs are incented by the need to serve their own core customers as well as their joint-use arrangements with Bell Canada, as well as their own business plans to enter into telecommunications. So I don't see a concern in terms of the LDCs not getting the appropriate incentive when the formula we propose does provide for reasonable cost recovery by a third-party attacher.

511
MS. FRIEDMAN: Okay. But I think from what you're saying, you both do agree with me that this Board, in considering what regulatory framework it's going to put in place, should look at what incentives are provided to the LDC. Is that not a consideration at all for this Board to worry about incentives to the LDC?

512
MR. GLIST: I thought that both the LDCs' experts and we started from the same premise, that incremental costs are the economically efficient rate.

513
MS. FRIEDMAN: With the greatest of respect, that's not my question. I just want to know if this Board should be considering, if it's putting -- if it's laying down three different methodologies against one another, should one of its considerations be the incentives provided for LDC investment of one versus the other?

514
MR. FORD: Perhaps I could just say that I imagine the Board might be concerned if one of those methodologies provided a disincentive to the LDC.

515
MS. KRAVTIN: Well, again, getting back to Paul's comments, and I think there was some look that you weren't sure why he was talking about incremental costs at that point. From the situation of incentives, that's really an efficiency concept. And as your experts acknowledge from an efficiency standpoint, as long as the rate recovered by the LDC from incremental attachers is set to recover their incremental costs, then the situation should be efficient and avoid cross-subsidy. So from an incentive perspective, I think the incremental cost as the lower rate standard, you know, would take care of that.

516
MS. FRIEDMAN: Let's move on, then, to discuss a bit of the efficiency versus equity of rates issue.

517
Ms. Kravtin, you just referred to the cross-subsidy issue. I take it you would agree with me that there are a range of pole rates that are free of cross-subsidies, not just one rate?

518
MS. KRAVTIN: Well, certainly there would be a range of rates that would be free of cross-subsidy in that the requirement for proving that no cross-subsidy exists would be that a rate covers incremental costs. So it's kind of a threshold recovery as far as cross-subsidy.

519
MS. FRIEDMAN: All right. So there's more than one rate that would be cross-subsidy free, in other words?

520
MS. KRAVTIN: Yes. But that rate may not be efficient, or fair, or appropriate.

521
MS. FRIEDMAN: That's right. So what you're saying, I take it, Ms. Kravtin, it's not enough for them to be economically efficient or cross-subsidy-free, in addition to that

they
have to be fair?

522
MS. KRAVTIN: Well, if I'm wearing my economist's hat, I might be inclined to say that as long as we satisfy, you know, efficiency, you know, from a pure economics perspective, that might be sufficient. And for certain industrial policy decisions, that might be considered appropriate.

523
MS. FRIEDMAN: Perhaps I could just put to you and Mr. Glist, he's welcome to comment as well, of course. At page 8 of your report, you talk about the economic and policy rationale underlying the CRTC's decision. It says the following:

524
"The economic and policy rationale underlying the CRTC's policy decision to allow cable company access to telephone poles at a fair and reasonable rate and its inherent applicability to electricity poles ..."

525
So in this proceeding, in any event, the CCTA's position is that the rate also has to be fair and reasonable, not just efficient?

526
MR. GLIST: Well, please remember that we were asked to reply to the submission of the LDCs' experts. And as we read that submission, it said, incremental cost is the economically efficient path, but one should also, in the interests of fairness or Rawlsian justice, as a matter of philosophy, go above that.

527
And so we're saying, okay, first of all, even without getting to philosophy, pure economic costing principles gets you to proportionate use. But that there are also a host of other policies that could inform that decision, and say there are actually customer benefits, consumer welfare, societal benefits, that are also achieved by using a proportional-use formula. Is that a fair way of putting it?

528
MS. KRAVTIN: Yes, that's fair.

529
MS. FRIEDMAN: Perhaps, then, I can take you to some of your other criticisms, and I understand your role as a reply expert witness was to look critically at Drs. Mitchell and Yatchew's report, so perhaps I can understand a bit of your criticisms to that report.

530
On page 3 of your report, I'll quote again, and perhaps you can find it while I'm reading --

531
MR. BRETT: Sorry to interrupt, Ms. Friedman. Would you mind flagging, or Mr. Chairman, through you, could you ask Ms. Friedman to flag the lines she's quoting from. It helps the witnesses to just --

532
MR. KAISER: Thank you.

533
MR. BRETT: Sorry.

534
MS. FRIEDMAN: No problem.

535
If we go to the second paragraph, starting at line 25 is the part I'd like to draw to your attention, Ms.
Kravtin. It reads -- the middle of line 25 reads:

536
"But if the cable attachment will take up less space on a pole, more space will be available on the pole for
other uses and/or users, and the creator of the innovative miniaturized attachments would be appropriately rewarded."

537
So you're talking about a situation here where the cable company is innovative and needs less space on
the pole, and rewards that should go to that innovator. I take it you would agree that the creator of that, of
a miniaturized attachment, would require less dedicated space on a pole?

538
MS. KRAVTIN: Yes, but I'd like to clarify that in -- again, this is a summary referring to text that
details a discussion in more detail.

539
I am really rebutting here a hypothetical concern raised in the Mitchell and Yatchew report as to, but
what if the, you know, third party attacher, cable, comes up with some miniaturized version? I'm not
putting that forward as my evidence, that they have done that, would have done that, are considering that.
I'm just trying to respond to their hypothetical, because the LDCs are both saying, We have to build these
poles higher and heavier to accommodate cable, but at the same time they're also saying, Oh, but they
could get so miniature that, you know, there would be no use.

540
So I'm responding to their hypothetical as opposed to presenting this as any sort of, you know, realistic or
definite condition that the cable operators are working towards.

541
MS. FRIEDMAN: Okay. Would you agree that any methodology that assigns the cost of dedicated
space to the user of that dedicated space would reward the miniaturizer/innovator
for reducing its needs for debt indicated space? In other words, their charge would become less as they required less space, as long as the model charged them for dedicated space?

542
MS. KRAVTIN: Well, in theory yes. But in practice, the regulators have assigned a standard
presumptive benchmark to the attacher, so that in practice, where the formula we
have proposed, it has been applied in other jurisdictions where such formulas are
used, you know, there is a minimum standard, and, you know, that's what is applied.

543
MS. FRIEDMAN: Okay. If this Board --

544
MS. KRAVTIN: Did you want to add to that?

545

MR. GLIST: I would just -- so, for example, the miniaturization, in a sense, all that's on is a -- is a three-inch bracket and a through-bolt. But the methodology that Mr. Ford has put forward says we will take several feet of cost assignment even though the actual device can be measured in inches.

546
MS. FRIEDMAN: We're talking about a situation now, and I understand your reference to other regulatory frameworks and to Mr. Ford's model. But what if this Board were to put in place a methodology whereby one of the elements of the charge comes from the actual amount of dedicated space they use? Then clearly, if they use less dedicated space, their charge would be less, if that was the methodology. It's not Mr. Ford's methodology and it's not a methodology you're familiar with from the States, but it's a methodology that says, as one element, you pay for the dedicated space you use, in inches?

547
MS. KRAVTIN: Would the LDCs like to propose that? In all seriousness, I mean, that's not the way -- we have taken, I think, the theoretical aspects of the discussion, and ultimately the proposal is for a formula that is proposed, you know, by Mr. Ford, and that does, you know, require the benchmark space allocated to a third party attacher.

548
MS. FRIEDMAN: You do appreciate, however, though, that Mr. Ford's model is not the only benchmark, fairness benchmark, before this Panel; that Drs. Mitchell and Yatchew have proposed other benchmarks.

549
MS. KRAVTIN: They have proposed other benchmarks, but I would submit that their benchmarks are not useful in that they are predicated on two basic conditions, neither of which exist. And it's very clearly set forth in their report that those conditions are: The parties to the case have equal bargaining power, and that the parties have similar opportunities to build the essential-use facilities. And those conditions don't exist.

550
And, you know, I would submit that the formula that CCTA has put forward is designed for the realities, the practical realities that is facing these industries, not the theoretical model, where equal bargaining and equal opportunities to build exist, because they don't. I think the record's clear on that.

551
MS. FRIEDMAN: Okay. I'll leave, of course, our expert witnesses to deal with their positions on that.

552
But you do appreciate that one of the benchmarking -- one of the benchmarks they put forward says that:

553
"The buried and clearance space would be shared equally, and costs of dedicated space would be borne by the users of that dedicated space."

554
Do you understand that from their paper, that that's one of the benchmarks they propose?

555
MS. KRAVTIN: Yes, I do. And I also understand, as I just repeated, that the

equal or
proportionate sharing of those common costs is appropriate under conditions where there exists equal bargaining power and similar opportunities to build the
essential facility as planned.

556
MS. FRIEDMAN: Okay. Now, under their benchmarking formula, the charge to this innovator of a
miniaturized attachment would go down as their dedicated space use goes down; do you understand that?

557
MR. GLIST: I thought that the purpose of their example was to say, Don't go there, because
miniaturization would drop the charge too much.

558
MS. FRIEDMAN: Would it --

559
MR. GLIST: Did I misunderstand?

560
MS. FRIEDMAN: Sorry, let me take you back. I'm not going to what the purpose of their example
was. I'm giving you one of their methodologies. And let's say this Board imposed
that methodology, which is, they share equally buried and clearance space costs,
and each user bears its own costs of dedicated space. In a situation like that, a
cable company could innovate and would be appropriately rewarded because they would see their charge go down as their dedicated space goes down. Do you agree with that?

561
MR. GLIST: No, I don't, because -- again, not to be overly practical. I look at the math, and the math is
telling me that if you start from the false premise that the support space and the buried
space is to be allocated equally, then you are laying the theoretical foundation for pole
charges that have been found unreasonable all across North America. And so it's not a
question of, well, couldn't that provide the right rewards to third-party attachers? No.
Because it's starting from a punitive position that is based on false premises.

562
MS. FRIEDMAN: If I'm a cable company, though, and I won't harp on this, my charge is made up of
A plus B. And A goes down. My charge goes down. Is that correct? I mean, that's simple math.

563
MS. KRAVTIN: Right, I guess I'm not seeing under the formulas proposed that A would
necessarily go down. If, again, the numbers that are plugged into the formula would performance stay at their benchmark level, I'm not -- and I'll ask this to
Paul. Have there been any situations where a cable attacher has sought to pay less than the 1-foot attachment that's been established by the FCC?

564
MR. GLIST: That's been established that the physical attachment is a lot less than one foot. But the
proportionate use allocator is assigned a greater proportion of space than the physical
space actually consumed.

565
MS. FRIEDMAN: If I have a model where I'm paying per inch, and I have innovated such that I go from using 5 inches to one inch, my charge will go down, will it not? We could move on.

566
MS. KRAVTIN: She's just asking about a theoretical, hypothetical model that doesn't relate to the application of the proposals, that issue in this proceeding. I mean, it certainly could be -- you know, would be true, as you've defined it.

567
MS. FRIEDMAN: To be clear for the record, what we are talking about is one of the methodologies that Drs. Mitchell and Yatchew do put before this Board in the evidence.

568
MS. KRAVTIN: Well, again, they talk about theoretical constructs. I don't believe they translated those theoretical constructs into a specific rate proposal or application. Actually, if I could confer with Mr. Ford for a minute.

569
MS. FRIEDMAN: I'd like to move on, now, to the question of competitive neutrality, Ms. Kravtin. I think, as we heard this morning, that the concept of competitive neutrality, all parties agree is important, and I'd like to discuss it with you because I'm not sure that everyone involved in the hearing agrees on what it means. So just to get a sense of what competitive neutrality means to you. So I'd like to just ask you a few questions in that regard.

570
Does competitive neutrality mean to you that all competitors should face the same rate for access to the support structures?

571
MS. KRAVTIN: No, it does not. If I could expand on that, because I've done quite a bit of work in the area of competitive neutrality. Generally, as that phrase has been used in the regulatory arena as referring to fair and balanced legal regulatory and economic operating environments for the competitors, and that would take into account certain practical realities of how and where they're operating their businesses or their business plans. So it's not necessarily equal as much as balanced, and the creation of a level playing field. Paul, did you want to add to that?

572
MR. GLIST: No.

573
MS. FRIEDMAN: You have suggested in your report that electricity utilities, albeit through affiliates, compete with cable companies; is that correct?

574
MS. KRAVTIN: Yes. Compete or potentially could compete, yes.

575
MS. FRIEDMAN: Okay. So taking your definition or your expansion on what competitive neutrality means, I take it that if an electricity distributor competes with a

cable company, they should face balanced terms of access to the shared support structure? That, as a competitor, they don't have to face the same rate of access to a support structure, but -- I'm not sure the words you used were balanced or even-handed access conditions. Is that fair? I'm trying to understand your position.

576

MS. KRAVTIN: Yes, but to clarify, the competitors would -- well, would be the telecom providers and what would be the, I guess, telecommunications affiliate of the distribution company. Because the distribution company -- and I must say I'm not closely familiar with the rules of affiliate relations here in Canada. I would hope there would be rules similar to in the States that seek to separate the regulated and non-regulated portions of the utility larger utility holding companies' business.

577

MS. FRIEDMAN: Would you agree that when one telecom supplier achieves lower prices only because it faces lower attachment rates and not because it's become a more efficient supplier, consumers' choices would be biassed away from the more efficient supplier? In other words, they have lower prices because they face lower access rates not because they're more efficient.

578

MS. KRAVTIN: Excuse me. I'd like to confer with Mr. Glist for a minute.

579

Yes. As I was going to say, I think that -- I could not answer yes to the question as you've posed it because it's looking at, you know, one element of the attachment issue. Because there are a host of other factors relating to that attachment in terms of access to the poles and permitting that would affect the LDCs' affiliate differently from a third-party attacher. So I think we'd have -- in terms of disadvantaging or advantaging, we get into a larger discussion of competitive advantage, I would submit that the affiliate of the LDC is in a position to have a significant competitive advantage over that of a third-party attacher.

580

MS. FRIEDMAN: To sum up, is it fair to say that companies that compete directly in markets for final services should face even-handed terms of access to support structures?

581

MS. KRAVTIN: Yes.

582

MS. FRIEDMAN: I'd like to turn, now, Ms. Kravtin, to just a brief discussion on marginal cost pricing. I understand that the CCTA is not recommending a marginal cost pricing approach here, in that they are recommending a contribution to embedded costs. I'm going to find you the line. Thank you. On page 13 of your report, you briefly discuss the issue of marginal cost pricing, at line 32 of page 13. The report states as follows:

583

"From an economic standpoint, there is nothing the least bit problematic with a user who causes little or no additional cost being charged a price close to zero."

584

Ms. Kravtin, when this type of pricing model is applied, that's known as marginal cost pricing; is that
correct?

585
MS. KRAVTIN: When the rates set are based on incremental costs.

586
MS. FRIEDMAN: That's right. And so, if someone causes little or no additional costs, then their
price should be close to zero?

587
MS. KRAVTIN: Yes.

588
MS. FRIEDMAN: Would you agree that the incremental cost of providing cable service to an
additional tenant in an apartment building is small? You've got an apartment building fully wired for cable, a new tenant comes in, is there a small incremental cost of supplying cable to that customer? And I'm happy for someone else to respond to that question.

589
MR. GLIST: It depends on a lot of things, as you would expect. You would ordinarily have additional
programming costs in order to supply service to that new customer. You would probably
incur customer service costs in servicing the account, both the installation and
trouble-shooting, setup, questions. If the -- the physical plant may or may not be ready
and it might require a technician in order to get you from the junction box to the right
wall plate. So I don't know if there's a single answer that covers all cases.

590
MS. FRIEDMAN: Can we agree, though, that the cost for cable services in such a situation is not
based on a marginal cost pricing model? The cable company -- and I'm happy if the cable company representatives answer this. The price is not determined based on a marginal -- looking at the marginal costs of serving that tenant. It's
not used in that circumstance.

591
MS. ASSHETON-SMITH: If I understand your question correctly, I think perhaps what you were
suggesting is, those incremental costs of the truck roll, the installation, I
think those would be the equivalent of make-ready charges. They are not factored into, necessarily, the price of the service -- ongoing administration costs are, but the installation charge itself would be an upfront cost to the customer at the time the service is deployed.

592
MS. FRIEDMAN: I think just to bypass that line of questioning, if we can, that you would agree
with me that marginal cost pricing is not used in every circumstance where incremental costs are small or close to zero. There are times when marginal-cost
pricing is used in certain markets and times where it's not.

593
MR. GLIST: There is ...

594
MR. GREENHAM: I'm sorry, if I could speak to that just a little bit.

595
MS. FRIEDMAN: Sure.

596
MR. GREENHAM: The costs typically in price ranges that we deploy are what the market will bear. And in a free market, that's where everything goes. But in the situation with pole rentals, it's not a free market, it's a monopoly.

597
MR. GLIST: In that the apartment owner, the homeowner, can go to DirecTV, or its equivalent here.

598
MS. ASSHETON-SMITH: Bell ExpressVu.

599
MR. GLIST: Bell ExpressVu, which serves as the constraining influence and the source of many promotional rates and discounts.

600
MS. FRIEDMAN: In any event, perhaps Ms. Assheton-Smith can just confirm. The CCTA is not advocating a marginal cost pricing approach to setting the access rate in this case.

601
MS. ASSHETON-SMITH: I don't believe that's reflected in our proposed methodology. Let me confer. Mr. Ford, perhaps --

602
MR. FORD: Well, that's correct. And perhaps I can relate that to something I said earlier in terms of disincentives. And I think this Board might be providing a disincentive, in the sense I used that term earlier, if access rates, access charges were recovering less than their incremental costs.

603
But all parties have agreed, and it was in section 3(a) of the settlement conference document, that the recurring charges should provide for the full recovery of incremental costs, plus provide a contribution towards common costs over and above that. So I think this Board should have no concern that, as long as the rate is above incremental costs, it would be provide -- it would not be providing a disincentive.

604
MR. KAISER: Ms. Friedman, would this be a convenient time to break for lunch?

605
MS. FRIEDMAN: Absolutely.

606
MR. KAISER: We'll come back in an hour.

607
--- Recess taken at 12:35 p.m.

608
--- On resuming at 1:38 p.m.

609
MR. KAISER: Please be seated.

610
MR. KAISER: Ms. Friedman.

611

MR. LYLE: Mr. Chair, perhaps I could address just a couple of preliminary matters first.

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MR. KAISER: Yes, sir.

613
PRELIMINARY MATTERS:

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MR. LYLE: With respect to scheduling, Ms. Friedman has indicated that she believes her full witness panel would be available for cross-examination on November 10th. I understand from the Board's internal schedule that the panel would be available on the afternoon of the 10th. I also understand from Ms. Crowe that her client would be available either on the 8th or the 10th, if we were not able to hear from her client tomorrow.

615
MR. KAISER: All right. We'll get back to you after the afternoon break on that, if we can.

616
MR. LYLE: Thank you, Mr. Chair. And I just want to indicate one other thing. I understand from counsel that Ms. Friedman is expecting to take an extra hour and Mr. Ruby anticipates he'll be the rest of the afternoon.

617
MR. KAISER: Thank you.

618
MR. LYLE: And I believe, Ms. Friedman, you have an answer to an undertaking?

619
MS. FRIEDMAN: That's right. In addition to London Hydro, the other electricity distributors not represented by the EDA are the following: Attawapiskat Power Corporation, Fort Albany Power Corporation, and Kashechewan Power Corporation.

620
MR. KAISER: Now, I know that you're not representing these utilities. Is there a possibility, though, that you could inquire if they have any position on this matter?

621
MS. FRIEDMAN: We don't have -- we are in regular contact with London Hydro, even though they're not a member, so that's not a concern. And we don't have regular contact with the other three, but we can contact them.

622
MR. KAISER: All right. I appreciate that.

623
MR. LYLE: We'll make that Undertaking F.1.3.

624
MR. KAISER: Thank you.

625
UNDERTAKING NO. F.1.3: TO INQUIRE OF ATTAWAPISKAT POWER CORPORATION, FORT ALBANY POWER CORPORATION AND KASHECHEWAN POWER CORPORATION AS TO THEIR POSITION ON THE MATTER AT

HAND

626
MR. KAISER: Proceed whenever you're ready.

627
CCTA PANEL 1 - FORD, KRAVTIN, GLIST, ASSHETON-SMITH, O'BRIEN, ARMSTRONG, GREENHAM:

628
D.FORD; Previously sworn.

629
P.KRAVTIN; Previously sworn.

630
P.GLIST; Previously sworn.

631
L.ASSHETON-SMITH; Previously sworn.

632
R.O'BRIEN; Previously sworn.

633
J.ARMSTRONG; Previously sworn.

634
S.GREENHAM; Previously sworn.

635
CROSS-EXAMINATION BY MS. FRIEDMAN:

636
MS. FRIEDMAN: Thank you.

637
Ms. Kravtin, Mr. Glist, I just have a couple more questions for you. At page 10 of your report, and it's line 25, and this is just the heading of a section appearing on page 10, it says: "Increased pole costs will harm deployment of advanced information-age services and technologies."

638
And then in that section you go on to discuss the potential effects of higher pole charges -- higher pole costs on cable services. My question is this: Have you similarly opined on the impact of various pole rents on electricity services?

639
MR. GLIST: In this report, I don't believe we have explicitly done it. But it is my view that adopting the approach to the charges that Mr. Ford has proposed would not impose a hardship on the LDCs. It would, in fact, represent a contribution by cable companies to the LDCs over and above incremental costs and so would be a benefit.

640
MS. FRIEDMAN: In your view, is the impact on electricity services a relevant factor for this Board to consider in setting a methodology?

641
MR. GLIST: I think it is a fair avenue of inquiry.

642

MS. FRIEDMAN: In the CCTA's response to an EDA interrogatory, its interrogatory 2(e), and it's at page 8 of 21 of the CCTA's responses to the EDA's interrogatories, it says the following:

643
"The impact on retail cable service prices is not a relevant factor in determining a just and reasonable rate for access to electricity distributor poles. As stated in response to EDA number 2(b), pole charges must be based on transparent and appropriate costing methodologies and rate-setting principles. The price of retail cable service has no bearing on the cost of accessing the pole."

644
Given that position with respect to retail cable service prices, is it also your view that the impact on electricity prices is not a relevant factor for this Board?

645
MR. GLIST: I think that my prior answer with respect to the deleterious impact of pole rents on services offered by cable companies is a relevant consideration in refuting the approach by Mitchell. In terms of just coming in and evaluating what the right costing method is, I think you can get to the right costing method just by looking at the underlying costs and proportionate use.

646
MR. FRIEDMAN: Okay. I'm just going to take you to one more reference in your report. And that's at page 16, line 32. Sorry. I have a double reference here in my notes. Let me just confirm. Oh, sorry. Sorry. The reference is page 16, line 38, the last line. And it continues on to the next page -- page 17, to line 5. And I'll read it into the record:

647
"Regulatory intervention is needed to help ensure the negotiation process produces an outcome that effectively and efficiently balances the interests of the two parties and at the same time promotes the public policy goals of a competitive telecommunications market and the widespread deployment of advanced, information-age services and technologies. Application of the CRTC methodology to electric poles will achieve these twin goals."

648
Are you suggesting, with that statement, that this Board give no consideration to other public policy goals? Is it just the twin goals that are relevant?

649
MR. GLIST: You know, I think that -- I don't want us to dispute over nomenclature. What I'm trying to say is very similar to what EDA has said: That in the absence of specific policy directives to the contrary from the Government, the Board should consider that its mandate is to ensure that pole attachment rates fully and fairly allocate costs to all users. And what I'm saying is that if you follow the proportional-use approach to costing that we are proposing, that you will serve those goals and you will have the incidental effect of also serving some telecommunications social goals that have been identified

as one
aspect of fairness that one can look at, if you're looking at fairness at all.

650
MS. KRAVTIN: Right. I would add to that, in the context of a discussion in that entire section,
which is addressing the justification for regulatory intervention, where there is a
situation of a monopoly control of essential facilities. So it's within that context
that we're saying, if anything, regulatory intervention will facilitate negotiation,
not retard it. And that, obviously, primarily we're looking for an outcome that
effectively and efficiently balances the interests of the two parties, but at the
same time, serves these other public policy goals which Paul and I, obviously,
have done a lot of work in those areas. But the most primary goal, which we
state in the context of the section, is effectively and efficiently balancing the
interests of the two parties where there is unequal bargaining power and
opportunities to build those facilities.

651
MS. FRIEDMAN: Thank you. I think Mr. Ford has been feeling left out, so I'll just have a couple of
questions for him. Just to encapsulate, hopefully, if I can, your model, is it fair to
say your model is that total pole costs -- sorry, the total pole is divided into
usable and unusable space, and then the total pole costs are then allocated to a
tenant in the same proportion as the usable pole space it occupies?

652
MR. FORD: For the most part, yes. If I could just put one small qualifier on that, and that is that the
separation space, which is technically not used by cable - it is sometimes, by the way,
used for other uses, such as streetlights or traffic lights or things like this, but which is
not used for cable - is nevertheless, accordingly to the proposal that I developed for
CCTA, considered to be usable space in terms of that allocation to cable, so that that
would be divided between two users of the communication space.

653
So, effectively, then, for a cable user, it would be the one foot of space that it is deemed to use. And I use
the term "deemed," because, as Mr. Glist was saying this morning, the attachment may be a bolt and a
clamp that could be three inches high. But by convention, the spacing of those is one foot, so that you
could say a cable attachment -- a cable user makes use of one foot of the pole. But there is also
considered, in the model that I have described here, an additional 1.6 feet, which is half of the separation
space, for a total of 2.6 feet. So, yes, that would be considered, then, the usable space for cable.

654
The total usable space would be the communication space plus the separation space plus the power
space, and the costs of the common portions of the pole, the clearance and the buried, are allocated to
users based on their usage, proportionate usage, of that total of usable space that I just described.

655
MS. FRIEDMAN: And so, while this model refers to the buried and clearance space as unusable,

it's still used, in part?

656

MR. FORD: It's not -- it's not occupied uniquely --

657

MS. FRIEDMAN: That's right. It's common.

658

MR. FORD: -- by any user. It is required by all users, and we recognize that. And that is why we propose that the cost that is allocated to that common space be allocated to each user based on the proportion of usable space that it uses.

659

Now, I've been throwing around little terms here, and I may have -- so I'll check and see if Paul believes I said that correctly. I think he's quite familiar with it.

660

MR. GLIST: I think so. Just my shorthand is that you take the space above minimum grade north, and you say, How much of that am I going to assign to cable? And you get a ratio. And then you apply that ratio to the common -- the costs of the pole for the clearance space and the buried space.

661

MS. FRIEDMAN: Mr. Ford, if a pole is already built with the height and strength that would be required for power attachments, is it reasonable, in such circumstances where the pole does not have to be replaced, for the cable company to bear costs in relation to that greater height already built into the pole? So that was completely unclear. Let me just rephrase that.

662

The cable company comes to the pole, and it already is -- it's ready for their use. In your view, then, it's fair for the cable company to bear costs in relation to the greater height and strength of the pole that's been built for them, or ready for them?

663

MR. FORD: I don't think that there's ever been a suggestion that one would look at anything other than the embedded costs. And if I've interpreted your question correctly, I think you were asking me if we would suggest that, if the pole were 65 feet high, for power requirements, that somehow a smaller -- the costs of a smaller pole should be substituted in determining the costs. And the answer -- if that was your question, the answer would be no. We are suggesting that the poles be taken as they are, and that the embedded costs of that pole are what should be used, again, of course, across the entire population of poles because there would be an averaging process.

664

I would hasten to add, however, that the case you've described is probably not the case all that often, and that in many cases make-ready costs are required before the pole can accommodate the needs of the cable user.

665

MS. FRIEDMAN: Has your usable pole space model been published in any refereed journals where economists have been able to criticize it or comment on it?

666

MR. FORD: Not to my knowledge.

667

MR. GLIST: Well, let me just say that the proportionate-use method of allocating pole costs has been the subject of mountains of testimony in the United States, at the FCC, before Public Service Commissions, at the CRTC, and has been quite well vetted.

668

MS. FRIEDMAN: By regulators in regulatory proceedings, you're saying?

669

MR. GLIST: By regulators in regulatory proceedings who have considered input from panels like this, and economists, and so forth. So to me, the difference is that Mr. Ford's allocation of space to cable is far more generous than many -- in other words, he's saying, take 2.6 feet, whereas many regulators would say, Take 1 foot.

670

MS. FRIEDMAN: I appreciate that. And you appreciate I was asking about in the economic literature, whether it has been criticized or been opined upon.

671

Perhaps Ms. Kravtin knows if the usable pole space model has been published in any of the refereed journals in the economic academia context.

672

MS. KRAVTIN: Not that I am aware of, but I will say that representatives of the economic academia population have certainly, in various instances, given their input into the regulatory sphere. So to the extent they would do so, it would be more in the context of participation in the regulatory arenas in which those issues are being discussed, as opposed to in a purely theoretical basis, because that's the context in which these issues have been raised.

673

MS. FRIEDMAN: Mr. Ford, just turning for a moment to the issue of pole ownership. You say in your report that there are benefits to pole ownership. Do you acknowledge as well that the chance that the owner may not recover the full costs of the asset is a risk of ownership?

674

MR. FORD: I would acknowledge that under certain circumstances it could be a risk of ownership. However, looking again at the realities of the situation here, in the first place, the vast majority of the poles that we're discussing, the existing pole population, are constructed with the joint-use arrangement between the power utilities and the incumbent telephone companies in mind. So, in many cases, the sizing of the pole and the suitability for use of a power pole by a telecommunications carrier, the incumbent telephone company, is taken care of in order to meet each utility's requirements and responsibilities under the

joint-use arrangement.

675
Again, you've heard the term "make-ready costs" a few times, so that, of course, is often a factor again where, in order to make the pole suitable for use, in cases where that has not been done.

676
But again, getting back to your question of risk, so the poles are sized appropriately in order to meet the reciprocal access aspects of the joint-use arrangement. Moreover, each utility's costs of poles are included in the rate base on which a regulator will often, and usually does, permit a return. And so therefore the circumstances are not all that frequent where there would really be a risk or an exposure of non-recovery of costs.

677
MS. FRIEDMAN: Pole ownership, while you say there are benefits to it, it's not so determinative, is it, that a tenant should pay nothing? I mean, that's clear from the model.

678
MR. FORD: I think it's clear that that is not our proposal.

679
MS. FRIEDMAN: That's right. And it's clear as well that you're not even saying they should pay marginal costs. So pole ownership doesn't confer such a great benefit that tenants should only pay marginal costs.

680
MR. FORD: I point again, as I did before lunch, to the settlement agreement where all parties agreed that the incremental costs plus an element of contribution was the appropriate way to develop a charge.

681
MS. FRIEDMAN: Let me ask you this about pole ownership. If the parties entered into an access agreement where the terms of the agreement significantly reduces the owner's power and control over the poles, so the terms of the agreement constrain owner in terms of their planning, for example, would it be reasonable that the attacher pay a higher rate in those circumstances because the owner's giving up some control over its asset?

682
MS. ASSHETON-SMITH: Perhaps --

683
MR. FORD: Well, let me just, let me just first of all -- I think what you're suggesting, and I want to make sure we understand the question. And I'm not sure I'm in a position to answer, but at least I want to understand the question before I try to answer it. And it seems to me that you are asking if something other than cost-based rates would be appropriate if the asset were not a monopoly asset?

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MS. ASSHETON-SMITH: Actually, can I just take a stab at this?

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MR. FORD: Good.

686

MS. ASSHETON-SMITH: It seems to me that you're suggesting that there might be a circumstance where, in the course of a negotiation, the LDC would voluntarily give up its significant ownership rights in terms of its ultimate right of ownership, which is to control the asset, and ultimately to deny access or use of that asset. In a bargaining position where there is no equal bargaining power, it strikes me that that sort of situation would almost never occur, and I'm not aware of any situation where an LDC has, in fact, voluntarily agreed to give up its ownership rights.

687

MS. FRIEDMAN: You'll appreciate what I'm trying to get a handle on, the pole ownership issue, comes up quite a bit in the CCTA evidence. And I'm just trying to get a handle on how important it is. So, in a situation, I mean, is it so determinative -- so in a situation where the parties would agree, all right, I'll give you some rights of ownership, you just have to pay for it, could there be that give and take? And I think I understand Ms. Assheton-Smith as saying she doesn't think that's realistic, but that's really where I was going with the question, Mr. Ford.

688

MR. GLIST: I don't think it's real realistic in that the actual contractual relationship requires the cable company to apply for an individual or discrete permit for attaching to discrete space, pole-by-pole. And so that the pace of the deployment is controlled by the owner of the pole. I think it's clear so far what we're dealing is a set of embedded poles that are essential facilities owned by the pole owner.

689

And that in terms of surrender of those rights of ownership, it never comes up. On the rare occasions when a pole is decommissioned and the utility company transfers title to the cable company, they cut the top off the pole to make it unusable for electric attachments, so unhappy are they with the concept of attaching to somebody else's pole. So you can tell I'm troubled by the premise of the question, because it's divorced from our real-world experience.

690

MS. FRIEDMAN: You'll appreciate, though, in this hearing, we're talking about regulating afresh. So there's no regulated terms of access yet, nor is there a regulated methodology, nor is there a uniform rate. So what I'm just putting to you is, is there an interplay? For example, would you agree that if, in the agreement, the cable company was provided rights to be involved in the planning of new pole lines, might they be willing to pay more in terms of access than the rate put forward by the Ford model?

691

MR. GLIST: The actual subordinated rights afforded to cable companies in the real world, by all rights, would actually drive you down to an incremental-cost model. It is because of the assumption by this industry that it still wants to contribute towards common costs that you even get to the kind of proportionate-use allocation that we're talking about.

692

The hypothetical of negotiations turning out differently than the last ten years, it's just bizarre. I mean,

we're here where the parties, I think, agreed on terms and conditions. The only thing outstanding is the
price.

693
MS. FRIEDMAN: I'm not sure that that's what the evidence will show, but we'll leave that as it
stands.

694
Let's turn, Mr. Ford, to the CCTA's recommendation for a uniform rate. At page 26 of your report you
include the chart which shows, essentially, how the CRTC -- and how one would come to an annual pole
rental charge of $15.65. And there's the chart you've broken down for us how that happens. The net
embedded costs per pole used there, in that chart, from the data you had available at the time was $478
for Milton Hydro in 1995.

695
To the extent that there is a large variance in Ontario in the net embedded costs per pole, so suppose one
LDC has a $200 net embedded cost and another LDC has a $1500 net embedded cost, would you agree
that a uniform rate, based on the average, would result in one LDC overrecovering their costs and one
LDC underrecovering their costs?

696
MR. FORD: If what you stated was, in fact, true, then I think the proposal of CCTA provides a safety
valve where if the rates would, really, result in a significant over- or underrecovery,
either party could come to the Board. But it's interesting you raise that. We did ask
forward -- I'd like to be able to give you a definitive answer as to whether or not there
was a wide variance, rather than being theoretical about it. And as you might not be
surprised to hear, I was one of the architects of the question which asked EDA for the
cost data in order that we could determine whether or not there was a wide variance, and
what would be representative costs in order to make a more definitive proposal.

697
And as you know, because you, in fact, provided the data, that the data was not in the form, in most
cases, that, unfortunately, would give us an answer to that. However, I will take you to tab, I believe it's
36, of the data that was provided by EDA to the Board, dated October 20, 2004. And this is the
submission of Hamilton Hydro. Now, I admit there were some problems in the data. For example, one
company, Hawkesbury Hydro at tab 39, had the value in account U.S. of A. account, number 1380, as
zero, but in Hamilton Hydro's submission in addition to filling out the table they provided what, at my
initial glance, was a fairly thorough and internally consistent approach to determining the net embedded
pole costs.

698
Now, I acknowledge that I do not concur with the space allocation factor of 30 percent that they put
forward. However, I would note that their figure for the net embedded cost of poles with fixtures -- the
pages aren't numbered but it is really on the first page of their document entitled: "Pole attachment
licence fee calculator: Capital-related costs calculator," dated October 15, 2004. And the net embedded
cost of pole with fixtures is shown there as $477.

699
Now, this is a utility which is approximately four times the size of Milton in terms of the number of poles in its pole population, if I remember correctly, it's something of the order of three to four times, and yet the net-embedded cost, which is a major driver of many of the costs - the capital carrying cost, for example - is different from the number that I used by $1. Actually, $0.53, if we want to go to pennies. And so these numbers may not have as broad a variance as one would expect, and certainly probably not as broad a variance as you suggested in your question.

700
I would note just in passing, perhaps, that the figures for depreciation again are not that dissimilar, and those are two of the major capital-related costs.

701
MS. FRIEDMAN: So you've taken me to Hamilton's data, but I take it you haven't done that analysis for each -- looked at the data for each LDC and tried to figure out the variance as between them?

702
MR. FORD: I can assure you I would have loved to have been in a position to do that, and as I indicated earlier, I was one of the architects of the question that asked for the data. And unfortunately -- and I did look through -- quickly through every one of the filings that was provided, and in -- this filing was unique in terms of providing not only a number but a methodology. And that certainly wasn't the case in any other.

703
MS. FRIEDMAN: Have you undertaken an analysis of what would be an acceptable level of variance to use a uniform rate?

704
MR. FORD: No, I haven't. And I think it would be, perhaps, presumptuous of me to do so, because I think the safety valve, and we've used that term in a way I think we all understand, in terms of the CCTA's proposal, is to provide for relief where either of the parties believed that the recovery was -- there was significant over- or underrecovery. And I think that is very judgmental, and, in fact, it would probably be this Board that would decide what the meaning of "significant" in that context is. And it would be presumptuous of me to suggest it, I think.

705
MS. ASSHETON-SMITH: I could perhaps add some help on that a little bit.

706
Assuming that we actually had reliable and accurate cost data that was subject to testing, I think at any variance that perhaps exceeded 20 percent on either direction might be a good starting point. Just in terms of comparison, under the CRTC bill and keep rules for exchange of traffic, anything over 20 percent is considered something that needs to be settled. So perhaps, if that's helpful to the Board and to EDA, that's a number that -- I should premise that by the fact that we have not done a lot of thinking on it, but I think that might be a good starting point to think about.

707
MS. FRIEDMAN: In the CCTA's response to an interrogatory, and it was EDA's Interrogatory No. 5A, the CCTA explained the rationale for the uniform rate, in its view. And in addition to administrative efficiency and regulatory burden concerns, the CCTA stated the following:

708
"If the OEB establishes upper and lower bounds on rental charges, or provides LDCs with any discretion to set or negotiate final rates, LDCs would exercise market power to demand the highest available rate. Establishing a uniform pole rate based on transparent and appropriate costing methodologies and rate-setting principles is the only approach that would mitigate against the ability of the LDCs to exercise market power."

709
My question is this, and perhaps, Ms. Assheton-Smith, you can answer this: But would you agree that the establishment by this Board of a uniform methodology would also mitigate against the ability of the LDCs to exercise market power?

710
MS. ASSHETON-SMITH: The problem with the uniform methodology, without up-to-date, accurate and reliable costing data, is a practical one. And I think what we proposed -- the basis for a uniform rate, in many respects, is the fact that there is no other practical approach in the -- at least in the short term, as I think Mr. Dingwall pointed that out this morning. In the absence of the cost-based exercise being undertaken, there just isn't that data to plug into the methodology. So, in the absence of that data, yes, we would submit that this is a requirement to mitigate against the ability of LDCs to charge those rates.

711
MS. FRIEDMAN: But you're not saying that if this Board set a methodology and set guidelines for what numbers the LDCs should plug into that methodology, that they can't be trusted to plug in the numbers to a formula?

712
MS. ASSHETON-SMITH: It's not a matter of trusting the LDCs, it's a matter of testing the evidence. And what we're suggesting is that the rates should be based on the best available evidence to the Board in this proceeding, which we would maintain is the Milton Hydro evidence that was referred to by Mr. Ford in his evidence, and which was corroborated by the Hamilton Hydro evidence.

713
So I think that's our position. And I'll ask if any of my colleagues have anything else to add to that.

714
MS. FRIEDMAN: I'm going to turn to speak, hopefully, to Messrs. Armstrong and Greenham, if I could see them. Not that you want to see me, but you'll hear me, in any event.

715
I take it, sir, that each of you provided input into the CCTA's interrogatory responses; is that correct?

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MR. ARMSTRONG: Yes.

717
MS. FRIEDMAN: And in particular, with respect to the details about behaviour

of specific LDCs
vis-a-vis your companies in negotiations.

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MR. ARMSTRONG: Correct.

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MS. FRIEDMAN: Mr. Armstrong, I'll start with you, and I'd like to ask you a few questions in relation to Guelph Hydro, if I may.

720
Rogers wires or equipment is currently attached to Guelph poles; is that correct?

721
MR. ARMSTRONG: Rogers Cable is attached?

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MS. FRIEDMAN: Rogers Cable, sorry.

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MR. ARMSTRONG: Yes.

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MS. FRIEDMAN: And in the CCTA's response to a Board Staff Interrogatory No. 2, and that was at page 3 of 16, it was stated that at various times in 2003 and 2004, Guelph Hydro refused to issue permits to Rogers until a new pole rate had been determined.

725
Would it surprise you, Mr. Armstrong, to learn that Guelph Hydro's records indicate that all permits alplied for in 2003 were approved within one to three weeks?

726
MR. ARMSTRONG: It would surprise me. I have spoken with Mr. Stockman from Guelph Hydro this morning. He raised this issue with me.

727
In that response, we've said that in various times in 2003 and 2004, Guelph Hydro and Waterloo North refused permits. The reference to 2004 probably should have just been limited to Waterloo North Hydro as opposed to implicating both Guelph Hydro and Waterloo North Hydro. But my recollection is that in 2003 there were permits refused or delayed by Guelph Hydro.

728
MS. FRIEDMAN: In 2004, do you know how many permit applications Rogers Cable made to Guelph Hydro just this year?

729
MR. ARMSTRONG: Well, I guess, subject to the clarification that I gave in my last response, I'm not sure that I'm asserting that Guelph Hydro didn't -- did or didn't refuse or delay to issue permits in 2004.

730
MS. FRIEDMAN: Given that, Mr. Armstrong, then, I take it you wouldn't be surprised to learn, then, that Guelph Hydro's records show that the first permit applications received from Rogers this year were actually received on October 4th, so just this month, and they're currently being considered?

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MR. ARMSTRONG: Well, I guess there's a couple of responses. Given the amount of work that Rogers does in terms of upgrading and working on its networks, perhaps it is surprising that the first permit application was filed on October the 14th.

732
MS. FRIEDMAN: October 4th.

733
MR. ARMSTRONG: October 4th, sorry. But at the same time, I think what doesn't show up in the permit records is, when an LDC indicates to a cable company that it will not issue any permits, the cable company then has to make a determination of what it is going to do with respect to business. And I can say, for example, in Guelph, at a time when we were not getting permits from Guelph, we actually had to say to certain business customers, I'm sorry, we can't provide service to you. You'll have to find your service somewhere else, because we can't get aerial permits to feed you. So that wouldn't show up in whether or not -- Guelph Hydro would never know whether or not we had planned or intended or wanted to get permits in those instances.

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MS. FRIEDMAN: Mr. Greenham, if I could just turn to you just to discuss a bit about Cogeco's dealings with Ontario LDCs. And I'd like to start, if I may, just with Enwin Powerlines in Windsor. Would you agree with me, Mr. Greenham, that Cogeco equipment remains attached to Enwin poles today?

735
MR. GREENHAM: We currently are still attached and Enwin Hydro is actually still issuing permits. So we've continued to request permits and we continue to enjoy getting them approved. It's not the case with Oakville Hydro or Grimsby Hydro. Oakville Hydro, we haven't had any permits approved since 1997, and we stopped making application because it's a waste of resources to continue to make applications.

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MR. KAISER: Mr. Brett.

737
MR. BRETT: Sir?

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MR. KAISER: Before Mr. Greenham goes on, could you inquire of Mr. Armstrong if he could provide the names of the potential customers that were denied service because of the lack of permits?

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MR. BRETT: Yes, I could. And we could come back, we could --

740
MR. KAISER: If I could have an undertaking number for that Mr. Lyle?

741
MR. LYLE: That would be F.1.4, Mr. Chair.

742
MR. KAISER: Thank you.

743
UNDERTAKING NO. F.1.4: TO PROVIDE THE NAMES OF POTENTIAL CUSTOMERS THAT WERE DENIED SERVICE BECAUSE OF THE LACK OF PERMITS

744
MS. FRIEDMAN: One of the things, though, that I appreciate your clarification

on is what you've
said about Enwin. One of the things that's in the CCTA's interrogatory responses,
and that's the response to EDA's interrogatory 1(a), Enwin is listed as an LDC
that rebuffed a proposal from Cogeco for an access charge of greater than $15.65
per pole, per year.

745
MR. GREENHAM: Correct.

746
MS. FRIEDMAN: Would it surprise you to learn that, until recently, that the CEO of Enwin has
considered that Enwin and Cogeco have had an excellent relationship?

747
MR. GREENHAM: Even since the discussions on the agreement in the rates, we've been able to enter
into an agreement where they will transfer our facilities at a flat rate. It's one of
the few that I know of with any LDCs where they will do the transfer. So we
have a very good relationship with them. We continue to do fibre trades with
them. It's just that we did go through a period, and we do have -- we continue to
have no progress on signing an interim agreement at an interim rate.

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MS. FRIEDMAN: So you're aware, then, that Cogeco and Enwin began negotiating an agreement
about two years ago?

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MR. GREENHAM: It would be at least that, yeah.

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MS. FRIEDMAN: Okay. And I understand that originally Enwin sought a rate of $45 per pole; is
that correct?

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MR. GREENHAM: Yes, that was correct right up until the final negotiating hours.

752
MS. FRIEDMAN: Right. And that's higher than any rate Cogeco pays in Ontario; is that correct?

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MR. GREENHAM: It's higher than any rate we pay in Ontario. North Bay Hydro also asked for the
$45. We do, or were asked by North Bay Hydro for the same rate of $45 a pole.

754
MS. FRIEDMAN: And I understand that Cogeco advised that it did not want to set a precedent of
paying any greater than $42 per pole, as to that point that was the highest rate it
paid in the province; is that correct?

755
MR. GREENHAM: That's correct. We pay this fiscal year and next fiscal -- or not -- just this fiscal
year with Milton Hydro at $40.92 and with Centre Wellington Hydro at $40.92.

756
MS. ASSHETON-SMITH: Can I just interrupt for one moment, if I may. I just think we need to
make it clear that, in terms of these discussions, we're talking about the
application of interim agreement and not a final agreement. That these
are rates, even these high, where Cogeco has those, as you call them,

policies in place not to pay more than $42, that is not to enter into an interim agreement with a proviso that there will be a retroactivity clause that would allow them to go retroactively back to an earlier time, if and when the Board sets a regulated rate. So I just think it's important to characterize that policy as not really much of a policy, but rather as a means of doing business with a monopoly provider.

757

MR. GREENHAM: And to clarify also, those agreements were signed within a month or within weeks of when the Supreme Court of Canada ruling came down. So it was something that we've been working on again for about a year, and probably signed prematurely, based on further applications.

758

MR. KAISER: Mr. Brett, could you clarify whether there's -- this term retroactivity? If a lower rate is struck by the Board, is there a refund?

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MR. BRETT: My understanding as to what -- yes. My understanding of that arrangement, and I stand subject to being corrected, is that what it says is, the price is X, but if the Board sets another price, let's assume for the moment that price is lower than X, there is a refund. It goes back to the -- it actually goes back to the time the agreement was struck.

760

MR. GREENHAM: If I could be so bold, sorry. The settlement agreement issues that we reviewed this morning, item number 5, specifically spoke to retroactivity but just not clearly. That was what was implied there, and that's why there was a -- somebody that didn't agree with it, because not in all of their agreements do they have a retroactive clause in their agreements.

761

MR. KAISER: Yes, I thought that might be the difference. I couldn't understand for a moment why you were agreeing to exempt existing contracts, but it's because they get automatically amended under their terms as opposed to what MTS's contracts say.

762

MR. GREENHAM: And that's the difficulty we are having with Grimsby Hydro, they would not allow us to put in a retroactive clause in there. So that's where our difference is.

763

MR. KAISER: Just on that point, and I guess this should be addressed to you, Mr. Brett, on this very issue, will you be asking or maintaining that all existing contracts should be exempted or only those where you'd have the retroactivity clause, i.e., the Grimsby case, as I understand it, you don't have that clause.

764

MR. GREENHAM: We don't have that clause, but we don't have an agreement. We haven't paid anything more than --

765

MR. KAISER: I see. So any case where you have agreements you have retroactivity clause; is that correct?

766

MR. GREENHAM: Yes.

767
MR. KAISER: Right. Thank you.

768
MS. FRIEDMAN: Just taking you back, Mr. Greenham, you had told me that $45 was unacceptable and Cogeco expressed to Enwin that it wouldn't pay more than $42. I mean, that's where we were.

769
MR. GREENHAM: Yes, that's where we were.

770
MS. FRIEDMAN: Okay. And Enwin agreed to accept $42, these are in these recent negotiations we were talking about.

771
MR. GREENHAM: Yes, that was approximately last December that we were in those negotiations, and at the time that decision went up to the board of directors with Cogeco, and the decision came back from that that we would not accept any more than an interim rate of $30 a pole and an interim rate with the retroactive clause.

772
MS. FRIEDMAN: Right. So word then went to Enwin that $30 was it and there was no further discussion on rate.

773
MR. GREENHAM: Exactly.

774
MS. FRIEDMAN: If we can turn just for a moment to Chatham-Kent Hydro. If I may, in that same list of LDCs who rebuffed a charge of greater than $15.65 per pole, Chatham-Kent is included. And I take it that Cogeco equipment remains attached to Chatham-Kent poles today; is that correct?

775
MR. GREENHAM: Yes, that's correct.

776
MS. FRIEDMAN: And were you aware that for the year 2001 Cogeco was invoiced at the rate of $16.84 per year?

777
MR. GREENHAM: I have all those invoices on my desk.

778
MS. FRIEDMAN: And Cogeco paid those invoices for 2001?

779
MR. GREENHAM: Not to my knowledge.

780
MS. FRIEDMAN: Not for 2001?

781
MR. GREENHAM: Not to my knowledge. I'd have to go back and check that.

782
MS. FRIEDMAN: Okay. So we'll move on. Maybe it's the more recent bills that stick in your mind that are crowding your desk. My understanding, if you'll agree with me, for the years 2002 and 2003, Chatham-Kent sent an explanation to Cogeco that the 2001 rate would be grossed up for inflation, a rate of return in taxes, and that the

rate
would be $30.06. Is that your understanding?

783
MR. GREENHAM: That figure is familiar.

784
MS. FRIEDMAN: Okay. But Chatham-Kent has received no payments whatsoever for the years
2002 and 2003.

785
MR. GREENHAM: No, that's correct.

786
MS. FRIEDMAN: That's correct?

787
MR. GREENHAM: There's no retroactive clause in the letter of understanding that they proposed.

788
MS. FRIEDMAN: So just to confirm. Chatham-Kent has sent invoices at $30.06 per pole for 2002
and 2003, but has received no payments?

789
MR. GREENHAM: That's correct.

790
MS. FRIEDMAN: And Cogeco equipment remains attached to the Chatham Kent poles?

791
MR. GREENHAM: That's correct.

792
MS. FRIEDMAN: One last LDC to ask you about and that's Grimsby, which you brought up several
times. Just to confirm that Cogeco currently has equipment attached to Grimsby poles; is that correct?

793
MR. GREENHAM: Yes, we do.

794
MS. FRIEDMAN: And you've referred to this evidence, and it's referred to in the written evidence
as well, CCTA's response to EDA Interrogatory 2A(1). The CCTA said the following, and I'll quote it:

795
"CCTA attached two letters from Grimsby Power to Cogeco, dated September 11, 2003 and March 22,
2004. Grimsby Power threatens to deny any new attachments, or to deny Cogeco any new pole permits
unless Cogeco is willing to negotiate final terms acceptable to Grimsby."

796
That's just a quote from the interrogatory response. Are you aware, Mr. Greenham, that the president of
Grimsby Power wrote to this Board on September 24, 2004?

797
MR. GREENHAM: was that included in evidence?

798
MS. FRIEDMAN: It was filed with the Board.

799
MR. KAISER: Is it filed in these proceedings?

800
MR. LYLE: I understand, Mr. Chair, it is in the prefiled evidence.

801
MR. KAISER: Could you give a copy to the witness?

802
MS. FRIEDMAN: I'll just give you a moment to read it. And I'll just -- Mr. Greenham, I'll just read one sentence from that letter that you have before you. What the --

803
MR. BRETT: Chairman, if I could just ask -- I apologize to Ms. Friedman. I just want to make sure that we have the response here. There was a response written to this letter by Cogeco as well.

804
MR. KAISER: Mr. Lyle, do we have that?

805
MR. LYLE: Mr. Chair, I don't believe we have that in the prefiled material.

806
MR. KAISER: I wonder if we could come back to this once we've had copies of the response made. And I think the Board would also like to see this letter. So could we come back to this question after the break?

807
MS. FRIEDMAN: Sure.

808
MR. BRETT: We sent copies to everyone.

809
MR. RUBY: Sorry, go ahead.

810
MS. FRIEDMAN: Sorry, just quoting from that letter, the September 24 letter you have in front of you, the president of Grimsby Hydro says:

811
"What the CCTA omits to mention is that after most --"

812
MR. LYLE: Ms. Friedman, maybe we'll come back to that issue?

813
MS. FRIEDMAN: This is my last question, so -- I'm sorry.

814
MR. KAISER: Okay. We'll deal with it on redirect. All right. If you're going to put documents to these witnesses, make sure you give them to counsel ahead of time so we don't have to go through all of this.

815
MS. FRIEDMAN: Thank you, Mr. Chair.

816
Mr. Greenham seems very familiar with the relationship between the parties, so perhaps I can just do it this way.

817
Was it the case, Mr. Greenham, that after the terms were verbally agreed to amongst Grimsby and

Cogeco, the CCTA filed this application to the Board? And that caused Cogeco to re-open the terms with
Grimsby?

818
MR. GREENHAM: Actually, what caused us to make this change is, at the same time that we were negotiating Grimsby Hydro, we were negotiating Enwin Hydro. And the decision with the Enwin Hydro went up to the board of directors, and the decision came back that all agreements should be at an interim rate of $30 a pole and all agreements should have a retroactive clause. And the retroactive clause is the portion of the Grimsby agreement that was missing, and they refused to put it in.

819
MS. ASSHETON-SMITH: Could I add to that, too, because I think it's important to recognize. In terms of the timing of the CCTA application, it neither was caused by nor caused the -- any individual negotiation to take a particular course. The reason why the application was filed was because, following the Supreme Court decision, the industry was effectively left without a regulator to arbitrate disputes.

820
So it was absolutely necessary, from an association point of view, on behalf of all of our members, and, in fact, we may not even have been aware of individual negotiations going on between members and LDCs, it was our collective decision in 2003, following the Supreme Court decision, to file this application. And I would suggest that it shouldn't be seen as causing any particular behaviour one way or the other in respect to these individual negotiations.

821
MS. FRIEDMAN: I appreciate, Ms. Assheton-Smith, that the decision of the association to take particular steps was independent of what was going on at the local level, but you would agree with me that you can't say whether that application caused or didn't cause any behaviour at the local level?

822
MS. ASSHETON-SMITH: No. What I would suggest is that what causes behaviour at the local are local conditions and the fact that local cable companies were faced with unilateral demands from hydro companies without the opportunity to negotiate a fair market rate on those poles.

823
MS. FRIEDMAN: And you'll agree with me that they were also faced -- one of the conditions that they were faced with was the fact that their industry association had filed an application with the Board?

824
MS. ASSHETON-SMITH: I don't think it was a situation they were faced with. It was --

825
MS. FRIEDMAN: That was a fact.

826
MS. ASSHETON-SMITH: That was a fact, yes.

827
MS. FRIEDMAN: Thank you.

828
Thank you. Those are my questions, Mr. Chair.

829
MR. KAISER: Thank you.

830
Mr. Ruby?

831
CROSS-EXAMINATION BY MR. RUBY:

832
MR. RUBY: Thank you, Mr. Chair.

833
Panel, my name is Peter Ruby. I'm counsel for the Canadian Electricity Association. As I go through my questions, if you find you can't hear me or you would like me to speak more slowly, just let me know.

834
Ms. Kravtin, have you ever done any work on pole attachment in Canada before the work you did on this proceeding?

835
MS. KRAVTIN: No, I don't believe I've testified in a pole attachment case in Canada, no.

836
MR. RUBY: Okay. Well, have you ever --

837
MR. GLIST: I have, though.

838
MR. RUBY: -- studied pole attachment -- I promise I'll go down the line, but --

839
MS. KRAVTIN: Seeing how we've sponsored a joint reply, it might be more efficient and helpful to the Board if Mr. Glist is allowed to answer in combination.

840
MR. RUBY: I didn't say no. I'm just trying to do this in order. I'm quite happy to start at this end and go counterclockwise as well.

841
MR. BRETT: The difference here, I think, Mr. Chairman, is it is one piece of evidence that both parties filed.

842
MR. KAISER: Yes, I understand.

843
MR. RUBY: Well, as I say, I'm quite happy to ask Mr. Glist for his experience as well. I don't mean to preclude him.

844
MR. KAISER: And he seems anxious to tell you.

845
MR. RUBY: Right. And I promise I'll get to him next.

846
So Ms. Kravtin, you mentioned your testimony. Have you ever done any other work with respect to pole attachment in Canada?

847
MS. KRAVTIN: No, not specifically with pole attachment.

848
MR. RUBY: Okay. Mr. Glist, have you done any work with respect to pole attachment in Canada before this hearing?

849
MR. GLIST: Yes. I was called as a witness at the CRTC many years ago, I think, at the origin of CRTC proceedings over establishing a fair rent for pole attachments. I provided testimony to the commissioner.

850
MR. RUBY: I take it this was telephone pole attachments?

851
MR. GLIST: The testimony that I was giving was with respect to the proportional use methodology for both telephone and the electric utility poles in the United States.

852
MR. RUBY: Okay. I understand that. I'm asking --

853
MR. GLIST: I under -- and honestly, I cannot remember at the time whether the CRTC's vision embraced both telephone poles and electric poles or not.

854
MR. RUBY: Okay. Can you tell me what year you did it, you did that work or gave that testimony?

855
MR. GLIST: I wish I could.

856
MR. RUBY: Okay. In the 1990s?

857
MR. GLIST: As I said, I wish I could tell you the time. We'd have to go back into CRTC records to be sure.

858
MR. RUBY: Okay. Have you ever studied pole attachment not in the regulatory sense of cost allocation but in the sense of technical and physical aspects of pole attachment?

859
MR. GLIST: Yes.

860
MR. RUBY: In Canada?

861
MR. GLIST: Yes. The CSA standards are very similar to the National Electric Safety Code.

862
MR. RUBY: And you've compared the two?

863
MR. GLIST: I've compared the two in pertinent points. I cannot say that I've gone cover to cover in CSA's specs. I've also studied the physical plant and spoken with some of the outside plant experts to make certain that my understanding was correct.

864

MR. RUBY: I take it, then, you don't have first-hand knowledge? You're relying on information about pole attachment in Canada provided to you by members of the CCTA?

865
MR. GLIST: If you consider the study of photographs to be first-hand, then I have first-hand information.

866
MR. RUBY: Anything else?

867
MR. GLIST: I have not gone on a ride out in Canada.

868
MR. RUBY: And Mr. Glist, you're a practicing lawyer; is that right?

869
MR. GLIST: Indeed.

870
MR. RUBY: And I take it you make your living, as some of us do, appearing at regulatory hearings?

871
MR. GLIST: Actually, I had the fortune or misfortune of entering practice in 1978 when pole attachment regulation began in the United States. And so I've had very intimate and extensive involvement both as an advisor and as a witness in the proceedings that are in my CV.

872
MR. RUBY: From the United States, with the exception of the one proceeding you mentioned at the CRTC?

873
MR. GLIST: There you go.

874
MR. RUBY: Right. And I'll try to be fair to you. I take it that you're not claiming to be an expert in Canadian technical safety and operational aspects of power pole attachment? That's not what you're testifying to as an expert.

875
MR. GLIST: Well, I have testified to some aspects of that that I think are germane to cost allocation principles, and I considered those issues to be within my expertise. But if you want me to design a utility plant for utility purposes, I'm not your guy.

876
MR. RUBY: So you're an expert on cost allocation, particularly as it's been applied in the United States, I take it? Is that a fair way to state it?

877
MR. GLIST: I know you would like to isolate me to the United States, and I'll let you -- and I appreciate that effort. My knowledge is as I have testified, it crosses the border a little bit. The poles don't look that different than they do in Michigan to Ontario, to New York, you know. The attachment standards, the techniques, the equipment, the national equipment market, international equipment markets in many ways. So there is some

border crossing.

878
MR. RUBY: But that's not your area of expertise, any of the things you just mentioned.

879
MR. GLIST: I have testified as an expert in outside plant matters when we get into these joint-use disputes.

880
MR. RUBY: No, I understand that. But you've been comparing the U.S. situation to Canada. You've clearly done some of your homework with respect to Canada, but that's not --

881
MR. GLIST: Thank you.

882
MR. RUBY: You're not claiming expertise in that area.

883
MR. GLIST: We've been back and forth on this, haven't we?

884
MR. RUBY: Well, I haven't got an answer, I don't think.

885
MR. GLIST: You don't think?

886
MR. BRETT: Mr. Chairman, I think the witness has given about as good an answer, as thorough an answer as Mr. Ruby can expect.

887
MR. RUBY: Well, if that's all he can do, I'm content to move on.

888
MR. KAISER: I think that's right, Mr. Ruby. He claims to be an expert with respect to pole attachment. Do I have it right, Mr. Brett?

889
MR. BRETT: I couldn't hear you, I'm sorry.

890
MR. KAISER: I thought the witness was, in fact, saying, trying to be perhaps a bit too polite, that he did claim to be an expert with respect to Canadian matters. Is that the case or not?

891
MR. GLIST: I consider myself to be an expert. I'm treated as an expert by regulatory tribunals in these matters. As I also tried to say, there may be technical issues in outside plant design that are beyond my expertise, and that's okay.

892
MR. KAISER: I think all Mr. Ruby wants to know is are you claiming to be a expert with respect to this matter in Canada? Is that right?

893
MR. RUBY: I would narrow it. I understand he's claiming to be an expert with respect to allocation of costs. What I just want to be clear on is that -- and I understood from Mr. Glist's answer is he's not claiming to be. Maybe I can put it this way, an engineering type expert

about
the way pole construction is done, attachment to poles. And I think he's just clarified that
for us, that he's not. So I'm quite content to move on.

894
MR. GLIST: It may depend on the question.

895
MR. KAISER: We're here about pricing methodology, aren't we? We're not here to build telephone
poles.

896
MR. RUBY: Well, with respect, Mr. Chair, you price what gets built. So it may be useful, as I go
through my questions, we may come back to this if it becomes necessary.

897
MR. KAISER: Right.

898
MR. RUBY: And Ms. Assheton-Smith, I won't put you through the same thing, I'll just say that you're
a lawyer; right?

899
MS. ASSHETON-SMITH: Yes, that's correct.

900
MR. KAISER: You shouldn't be so hard on lawyers.

901
MR. RUBY: I'm not. I'm just asking. I can't be too hard on one, being one myself. And I think it's Mr.
O'Brien at the other end. Mr. O'Brien, I understand your background's in accounting; is
that right?

902
MR. O'BRIEN: Way back, yes.

903
MR. RUBY: And you're not a, for want of a better shorthand, an engineering technical pole expert, are
you?

904
MR. O'BRIEN: No, I've been involved in joint-use negotiations on behalf of the OCTA, which was the
prior association to the CCTA so that's my expertise for being here.

905
MR. RUBY: Thank you. And Mr. Armstrong, I take it you're also a joint-use negotiator; is that right?

906
MR. ARMSTRONG: That's correct. I've been negotiating joint-use contracts and the like, municipal
access agreements, for five years for Rogers Cable.

907
MR. RUBY: And you're not claiming technical-type expertise about joint use in Canada?

908
MR. ARMSTRONG: No.

909
MR. RUBY: Now, Mr. Greenham, I understand that you do have some experience with the technical

aspects of joint use; is that right?

910
MR. GREENHAM: I understand the makeup of the pole and the requirements for us to be able to place attachments on a pole. I started out as a planner and made up many of the permits to apply for pole attachments, although I've never made an actual attachment, so I've never drilled a pole or climbed a pole.

911
MR. RUBY: Right. Thank you. Mr. Greenham, staying with you for the moment, you mentioned this morning some poles in Burlington that your company had put up; is that right?

912
MR. GREENHAM: I'm sorry?

913
MR. RUBY: You mentioned some poles in Burlington that your company had constructed?

914
MR. GREENHAM: Yes, we had to construct a pole line across the 407.

915
MR. RUBY: And how many poles was that?

916
MR. GREENHAM: I believe it was ten.

917
MR. RUBY: And who used those poles?

918
MR. GREENHAM: We're the only users of that pole, of those ten poles.

919
MR. KAISER: Is that the only case where you've had to put up your own poles?

920
MR. GREENHAM: It's very few and far between. I think we put in evidence that we probably have. I think it's far less than 2 per cent of the poles that were out there. And the majority of the poles that we are the sole owners of now we've acquired from hydro utilities that no longer required the pole, so they've topped them and left them to our ownership and our responsibility. I am aware, personally, of one other pole besides these ten that we've placed.

921
MR. KAISER: And those would be the only cases where you faced a refusal and had to put in your own poles?

922
MR. GREENHAM: No. The ten poles were placed because the LDC did not take into consideration our attachments and our requirement for clearance, and they had already built the line. And we had --

923
MR. KAISER: So it was a technical issue, it wasn't about a price dispute.

924
MR. GREENHAM: No it wasn't about the price. They forgot about us.

925
MR. RUBY: And how much -- well, how high were those poles?

926
MR. GREENHAM: I'm not -- I have no knowledge of how high those poles -- the

ones that we placed
or the ones that they --

927
MR. RUBY: No, your poles, your ten or so poles.

928
MR. GREENHAM: I believe they were 35-foot poles.

929
MR. RUBY: And how much did it cost to put them in.

930
MR. GREENHAM: I believe there's something on record already as to what the costs were.

931
MR. RUBY: Of those poles?

932
MR. BRETT: Perhaps we could take an undertaking to get that information.

933
MR. KAISER: Is that acceptable, Mr. Ruby?

934
MR. RUBY: It is as long as it gets answered before the completion of my cross-examination.

935
MR. KAISER: Can you answer that tomorrow, Mr. Brett? Shouldn't be hard to find that information.
Probably on your desk.

936
MR. BRETT: We can answer it tomorrow, sir.

937
MR. LYLE: We'll mark it as Undertaking F.1.5.

938
UNDERTAKING NO. F.1.5: TO PROVIDE THE COST OF INSTALLING THE TEN INDEPENDENT POLES

939
MR. RUBY: Thank you. And maybe we can, so I don't have to ask the whole range of questions, if
you can flesh out all the cost factors that Mr. Ford has identified in his report are relevant
to establishing the cost of a pole. I'm not dealing with allocation, because obviously this
is a sole-use pole; right? Just your pole.

940
MR. GREENHAM: These poles are, yes.

941
MR. RUBY: So I'd like all the factors that Mr. Ford -- or those that he says have to be considered.

942
MR. KAISER: And what's the relevance of that?

943
MR. RUBY: Well, one of the models, Mr. Chair, involves comparing stand-alone power poles and
stand-alone communications poles, and the evidence to date in this proceeding has been
that the cable companies say, We can't tell you what a stand-alone pole costs; that
model's not usable, it's not realistic, there's no such thing. Apparently there is such a

thing.

944

MS. ASSHETON-SMITH: Can I please respond to that?

945

I think to suggest that there is a stand-alone cost of ten cable poles to cross the 407 is far from suggesting that there is a stand-alone cost of a pole in a ubiquitous network, which is the pole cost that we were talking about.

946

MR. RUBY: All I'm trying to get is the information. We'll have an opportunity in submissions to deal with what flows from it, but the Chair asked me for the relevance, and that's it.

947

MR. KAISER: Can I just understand your question, because Mr. Brett probably wants to know what information he has to get.

948

MR. BRETT: Yes, that's what I was going to ask.

949

MR. KAISER: When you say "the factors," what do you mean, the wood, the hardware? What do you mean by "factors"?

950

MR. RUBY: No. Mr. Ford, in his report, addresses a number of costs that go into figuring out what the total cost of a pole is. And there's a chart at page 26. This is exhibit -- I'm not sure if it's called appendix C, I think, Mr. Ford's report to the CCTA's original application.

951

MR. BRETT: Mr. Chairman, in just looking at this, first of all, this information is -- some of these ...

952

The 407 information, first of all, is three years ago. And I think that all that Mr. Greenham can give Mr. Ruby is the actual costs of those poles, what it cost them to purchase them and install them. I mean, this piece of material that he's talking about here is Mr. Ford's analysis of how you get from -- this thing goes into all sorts of different issues.

953

MR. KAISER: Are you referring, Mr. Ruby, to page 26?

954

MR. RUBY: I am. And I'm even quite content that some of these items clearly wouldn't -- may not be applicable to this particular pole. But, for example, Mr. Ford says:

955

"You need to know the net-embedded costs of the pole."

956

He says:

957

"You need to know the depreciation expense."

958

He needs to know maintenance, capital carrying costs, any indirect costs. And the rest is just math, it's allocation, so I don't need those. But those cost factors, I'm just trying for a shorthand --

959
MR. GREENHAM: Mr. Ruby, we're not in the pole-building business, and we don't track depreciation of a pole. Like, we would have gone and gotten a contractor to go and source the pole, buy the pole, bring it back, put it in the ground for us, and I would have paid a flat sum for the installation.

960
MR. RUBY: If that's the case, then that would be the evidence I'd like.

961
MR. BRETT: We could get that, Mr. Chairman.

962
MR. KAISER: All right.

963
MR. SOMMERVILLE: Is this material in the evidence that has been filed in the applicant's case?

964
MR. RUBY: To my knowledge, it is not.

965
MS. ASSHETON-SMITH: No, it's not.

966
MR. SOMMERVILLE: The first instance of this, the ten poles coming up, was this morning in --

967
MS. ASSHETON-SMITH: No, no, no. There is a reference in our interrogatory response to the CEA estimating that the members in Ontario collectively own fewer than 250 poles. Rogers owns approximately 190; Cogeco owning about 20, including those ten; and other members owning fewer than 30 combined.

968
MR. SOMMERVILLE: And that's in an interrogatory response?

969
MS. ASSHETON-SMITH: That's a interrogatory response, yeah. It was CEA No. 2. We did indicate in our initial application that the total share of pole ownership in Ontario would be less than 2 percent of all poles. That was in the initial application.

970
MR. SOMMERVILLE: Was there any interrogatory question directed towards these costs?

971
MR. KAISER: You didn't ask this question in an interrogatory.

972
MR. RUBY: In fact, the question was my question. It was answered in a general way instead of a specific way. The question, in fact, that just got answered to is set out in the interrogatory responses, but it asks how many poles are owned by each company.

973
MR. KAISER: Right, which is not this question.

974
MR. RUBY: And some details about that. And it goes on -- or, I don't know, A to L worth of questions here.

975
MR. SOMMERVILLE: But you didn't ask about the costs related --

976
MS. ASSHETON-SMITH: There were some questions describing the factors affecting the installed cost of the poles, and in response to that series of questions, we noted that, except in very unusual circumstances, cable companies do not install their own poles. As such, there is no meaningful cost information available regarding the installed cost of a cable pole. And that was the response to that question.

977
MR. SOMMERVILLE: Thank you.

978
MR. KAISER: So, Mr. Ruby, the witness has said that, as I understand it, he'll have a bill on his desk, if he can find it showing what he paid the contractor for these poles. Is that acceptable?

979
MR. RUBY: If that's all there is, it is acceptable.

980
MR. KAISER: Thank you.

981
MR. RUBY: Thank you.

982
Maybe we can start, Mr. Greenham, with talking about communications poles since we're on that topic.

983
I take it that you'll agree with me that how high a communications pole has to be is addressed, at least in part, by the CSA standard that's been referred to repeatedly today and is in the evidence?

984
MR. BRETT: Sorry. I apologize, Mr. Ruby. You say there's a CSA standard in the evidence. You just tell us where that is.

985
MR. RUBY: Well, there's an elaborate reference. The shorthand for it is, it's standard C22.3, no. 1-01, and in the CEA's evidence, there's an extensive reference, a longer name for it.

986
MR. BRETT: But could you give us a page reference or anything for that?

987
MR. RUBY: Well, the standard itself is not contained. It's actually a regulatory document. It's an authority, as opposed to evidence. Power companies are required to follow it.

988
MR. KAISER: Where's the reference, Mr. Ruby, in the CEA evidence?

989
MR. RUBY: In fact, there is an entire -- I hate to call it a chapter, but there's just about a chapter devoted to it, or in part, at tab 3 of the CEA evidence.

990
MR. BRETT: This is labelled schedule 3, "Background Information Concerning Poles"? Is that it?

991
MR. RUBY: Yes. Page 3, title A to the CSA standard, and you'll see at paragraph 9 is

the full, proper
name of the standard, together with the dates it was approved.

992
MR. KAISER: Does the witness have that reference?

993
MR. GREENHAM: Yeah, I can see it here.

994
MR. RUBY: I take it you'll agree with me that this standard applies to sole-use communication poles?

995
MR. GREENHAM: As well as electric poles, yes.

996
MR. RUBY: Yes. And one of the things that the CSA standard addresses, or contributes to, is
determining the height of a pole; is that right?

997
MR. GREENHAM: It will contribute to it because it gives you minimum clearance levels over a road
allowance or over a portion of the road allowance that is not travelled. It also
gives you clearances for going over top of a pool. It's fairly detailed as to what
clearances are supposed to be.

998
MR. RUBY: Okay. And let's maybe do this analysis together.

999
A communications company, if it's building a sole-use pole, for its own use, it decides how much space it
needs on the pole; is that right? That's one of the things it does.

1000
MR. GREENHAM: That would be theoretical. Like, I've placed ten poles, and those were specific to
get clearance over top of a major highway, so they -- like, we took calculations
into effect to determine those poles. But I haven't done it for a lot of other poles
to determine what the communication requirements would be to build my own
pole line.

1001
MR. RUBY: Okay. Let me ask, because I don't want to exclude anybody, are there any of -- either Mr.
O'Brien or Mr. Armstrong, do you have any experience with the construction of power
poles? Or excuse me, communications poles?

1002
MR. O'BRIEN: No.

1003
MR. ARMSTRONG: No.

1004
MR. RUBY: Okay. So we'll have to deal, Mr. Greenham, with your ten poles because it's all we have.
When you built those poles, did you figure out how much space you would need on the
pole for your communications equipment?

1005
MR. GREENHAM: We figured out how much clearance we required over the 407 and what the
elevations of the land was on either side of the 407, and then from that
determined what the height to have pole was required so that we could maintain

clearance over the 407.

1006
MR. RUBY: All right, and did you figure out how much the wire was going to sag as it crossed the 407?

1007
MR. GREENHAM: Yes, we did.

1008
MR. RUBY: Right. And how much it was going to sag, that's the amount of space you needed; right?

1009
MR. GREENHAM: No, the amount of space on the pole is the attachment of the bolt and the strand clamps. The requirement is a clearance bay over the highway and the sag that is at mid-span is what -- you know, how your calculations are determined to make sure that you have the proper clearances.

1010
MR. RUBY: So you need to make sure, is it fair to say, that whatever the wire you have crossing the highway, it doesn't sag beyond whatever the minimum ground clearance is?

1011
MR. GREENHAM: That's correct.

1012
MR. RUBY: Right. And it's the CSA standard that tells you how far above the highway you have to be?

1013
MR. GREENHAM: Yes, that's correct.

1014
MR. RUBY: And is it fair to say that how much clearance you need varies depending on what passes underneath?

1015
MR. GREENHAM: It varies on what passes underneath and what the use of what's underneath is, such as a pool.

1016
MR. RUBY: I don't want to belabour the point, but for example, you need to be higher off a highway where trucks pass underneath than a driveway; is that right?

1017
MR. GREENHAM: Yes, that's correct.

1018
MR. RUBY: And without getting into the details, there's a standard that dictates how much a pole has to be buried under the ground.

1019
MR. GREENHAM: I believe that's true. I've never done that calculation.

1020
MR. RUBY: Right. But it's fair to say all poles have a buried portion.

1021
MR. GREENHAM: Yes.

1022
MR. RUBY: Right, otherwise they'd fall down.

1023
MR. GREENHAM: Well, but I would like to clarify that. You will find some communication poles in the north areas that are on stilts and are not in the ground at all.

1024
MR. RUBY: Okay. You would agree with me that those are relatively rare?

1025
MR. GREENHAM: Not in the northern country.

1026
MR. RUBY: All right. Fair enough. So is it fair to say that when you're buying your 35-foot pole -- which I think is what you told me you have over the 407?

1027
MR. GREENHAM: And that's -- like, I was not personally involved with this build, so that's a generalization.

1028
MR. RUBY: Okay. Sorry. Generalization, I'm not sure what you mean.

1029
MR. GREENHAM: It's a guess.

1030
MR. RUBY: Okay. Well, whatever the length was, you needed some minimum height, right, enough to put under the ground and enough to get over the highway.

1031
MR. GREENHAM: Yes, that's correct.

1032
MR. RUBY: And do you know what those measurements are? That is, how much was underground on those poles?

1033
MR. GREENHAM: I have no recollection. As I said, I was not personally involved with that build.

1034
MR. RUBY: Okay. Let's talk about power poles for a minute, then. The height of them is also partly governed by the same CSA standard; is that right?

1035
MR. GREENHAM: Yes, that's correct.

1036
MR. RUBY: And an electric distribution company has to figure out how much room it needs on the pole, the same way you did; is that right?

1037
MR. GREENHAM: Yes.

1038
MR. RUBY: And the same standard tells it how far its wire has to be above ground; is that right?

1039
MR. GREENHAM: To my understanding. I've never built a hydro line.

1040
MR. RUBY: Right. And they also need a piece of the pole underground, leaving aside stilts for the

moment.

1041

MR. GREENHAM: Yes.

1042

MR. RUBY: So let's just take an example. So, and you may want to jot this down, and I'm just going to try and use round numbers. And it's more for illustration than anything else, to make sure I understand this.

1043

If there's 3 and a half metres of space the power companies attaches facilities to and 6 metres, for example, to get over a driveway, and one and a half metres to go underground, that's 11 metres total; right? Even lawyers can do the occasional bit of math. Is that right, it adds up to 11?

1044

MR. GREENHAM: Yes, that's correct.

1045

MR. RUBY: And on that pole, if we built that pole, there would be no room for communications attachments; is that right?

1046

MR. GREENHAM: No.

1047

MR. RUBY: And with a joint-use pole, moving to a pole that uses --

1048

MR. GLIST: Just a minute. You might want to refer to tables, because minimum grade clearance for communications conductors can be lower than minimum grade clearance for power conductors. In your hypothetical, I'm not saying one way or another, but --

1049

MR. GREENHAM: Like, over an untravelled portion of highway, I believe you're allowed 10 feet of clearance, or if you're alongside a highway, so along a farmer's field.

1050

MR. RUBY: No, I understand. These are all assumptions. They can all vary. You agree with me; right? All these things can vary depending on local conditions and what's on the pole; is that right? Is that correct?

1051

MR. GREENHAM: Yes.

1052

MR. RUBY: All I'm asking you is that, if you assume that these things are the case, there's no room for a communications attachment; is that right?

1053

MR. GREENHAM: There is room.

1054

MR. RUBY: So where do you put it?

1055

MR. GREENHAM: You put it in that six metre section, depending on what clearance you require over the untravelled portion of the highway, or the right of way.

1056

MR. RUBY: So you can hang it lower than the minimum clearance because it's a different minimum clearance.

1057
MR. GREENHAM: That's correct.

1058
MR. RUBY: So maybe?

1059
MR. GREENHAM: Possibly.

1060
MR. RUBY: All right. That's fine. So, for a joint-use pole, that is, a pole that can accommodate both communications attachments and power poles, it's the same rules; right? The standards govern how much goes under ground and there's a standard that governs how high up, how much clearance you need above the ground; is that right?

1061
MR. GREENHAM: Yes.

1062
MR. RUBY: And you still need something buried; right?

1063
MR. GREENHAM: Yes.

1064
MR. RUBY: And you still need to be up in the air.

1065
MR. GREENHAM: Yes.

1066
MR. RUBY: Right. And so is it fair to say that the difference between a joint-use pole and a sole-use pole is the stuff that occurs on, let's call it, the upper half of the pole? I'm not taking exact measurements, but you've always got some kind of clearance and some kind of buried portion, the differences are up at the top.

1067
MR. GREENHAM: It's not on the bottom of the pole.

1068
MR. RUBY: Right.

1069
MR. GREENHAM: Like --

1070
MR. RUBY: I don't want to quibble with you about whether the top means half of whatever. It's not the bottom.

1071
MR. GLIST: I would take issue with that.

1072
MR. GREENHAM: It depends on the elevation of land that that pole's being mounted on as well. You need to maintain some clearance from a passer-by to be able to climb the pole and gain access to the strand and cable that's there. But if you're high enough and the next pole is low enough, you could be very low on that pole and still be able to maintain. So you could be close to half.

1073
MR. RUBY: No, the point I'm trying to make is I'm not making any quantitative

judgments. I'm just asking you to confirm that the clearance -- let's do it another way -- clearance and the buried portions is always on the bottom of the pole; right? Nothing goes below it? That's obvious.

1074
MR. GREENHAM: Yes.

1075
MR. RUBY: Okay. That's good enough for my purposes. And then you have to make sure that there's space for the electric facilities on that pole.

1076
MR. GREENHAM: If it's a hydro pole.

1077
MR. RUBY: Right. Well, it's a joint-use pole.

1078
MR. GREENHAM: A joint-use pole is also a telephone pole.

1079
MR. RUBY: Well, when I talk about joint-use, just to be clear, I mean communications and power.

1080
MR. GREENHAM: Okay.

1081
MR. RUBY: And we'll not quibble about whether it's a telecom company or whether it's a cable television company. And I'll just note, Ms. Assheton-Smith may be able to confirm this, the CCTA's actually changed its name recently; hasn't it?

1082
MS. ASSHETON-SMITH: That's correct.

1083
MR. RUBY: What did it use to be.

1084
MS. ASSHETON-SMITH: Well, and I should point out too the name change has yet to be formalized, but unofficially we have changed our name to the Canadian Cable Telecommunications Association to reflect the fact that we do provide telecommunications services such as high-speed Internet. Sorry, Canadian Cable Telecommunications Association.

1085
MR. RUBY: And what did you use to be?

1086
MS. ASSHETON-SMITH: Canadian Cable Television Association.

1087
MR. RUBY: Different name, same initials.

1088
MS. ASSHETON-SMITH: That's correct.

1089
MR. RUBY: Let's look at this, Mr. Greenham, another way. Will you agree with me that there's a large population of power poles that are already taller than they need to be strictly for electricity uses? This is in Ontario.

1090

MR. GREENHAM: I'm assuming the LDCs, yes, they've built some that are larger than just their requirement.

1091
MR. RUBY: And there's a lot of them; right? We're not -- this isn't like the stilts; right? It's --

1092
MR. GREENHAM: I think it's in evidence as to how many there are.

1093
MR. RUBY: And what that means to you, in part, is that, without major changes, those poles can accommodate communications attachments -- you don't have to replace the pole to get access.

1094
MR. GREENHAM: In some cases. In other cases we have to replace the pole.

1095
MR. RUBY: Those would be the ones that are too short to accommodate you.

1096
MR. GREENHAM: Not necessarily. There could be safety issues with the pole. The pole may -- like, the poles that we were talking about before, and how many there are, and how old the poles are, there was different construction practices with those poles. Some clearances, with the transformer being down lower on the pole instead of above the hydro and neutral, are existing builds that are already out there. Drip loops that come off of the secondary feeds can also go lower than a new build would nowadays.

1097
So you have to deal with what's out there, and what the conditions are out in the field.

1098
MR. RUBY: Right. And that's what everybody's being calling "make-ready," isn't it?

1099
MR. GREENHAM: For the most part, yes.

1100
MR. RUBY: Let's just stop there for a moment. So the things you've told me so far are, make-ready includes increasing pole height; is that right?

1101
MR. GREENHAM: In some cases, yes.

1102
MR. RUBY: Well, I'm just trying to get -- the things you get charged -- somebody has said, I can't remember who, that cable companies pay in the millions, I think it was --

1103
MR. GREENHAM: Yes, that's correct.

1104
MR. RUBY: -- for make-ready charges. So I'm just trying to figure out what you pay those for. Sometimes it's to increase the pole height; right?

1105
MR. GREENHAM: In some cases it's to increase the pole height, and sometimes it's because the transformer encroaches on the separation space; the service wire loops into the separation space; grounding or bonding on the transformers or streetlights is non-existent; the hydro company takes it upon themselves to change the class, the height, or the type of pole as we're going through for new construction.

Cleanup of existing third party's uses of the pole is also part of make-ready that gets passed on to us. Replacing or relocating an existing anchor is something that gets passed on to us. And then all safety or clearance issues are addressed at the pole at that time as well.

1106
Just to take us aside here, we had a response to the EDA No. 2(g), and it was a piece of a document from -- to one of our planners from Network Hydro -- Hydro One Networks services, and it was, to quote, anywhere -- there's two issues here, or two locations. And the make-ready costs vary anywhere from just over $1,000 per pole to $10,000 a pole for make-ready. So it's very easy for it to get up to millions of dollars of make-ready costs for any cable company.

1107
MR. RUBY: And I'm not contesting that. But it's not just height increases; right? There's all kinds of things you pay for.

1108
MR. GREENHAM: All kinds of things, yes.

1109
MR. RUBY: Now, can you pull out Mr. Ford's report. Again, I think this will be a useful tool for getting us past what otherwise could take a while. This again is appendix C of the CCTA's original application. And if you'll turn to page 2, you'll see at the top Mr. Ford has listed some figures that, at various points, he's called typical and sometimes normal. Do you see that?

1110
MR. GREENHAM: Yes, I do.

1111
MR. RUBY: So, for the moment, let's just take Mr. Ford's assumptions, all right? And these are assumptions, aren't they? Not all poles are 40 feet tall.

1112
MR. GREENHAM: Don, could you speak to that as to where the numbers came from?

1113
MR. RUBY: Mr. Ford, I'd be quite happy for you to help me here. All poles aren't 40 feet tall, are they?

1114
MR. FORD: No; that's correct. And as I think I indicated in the response to your Interrogatory No. 7, or CCTA responded the source of that document, and I would just note for the record that exactly the same diagram is found in the response by Hamilton Hydro at tab 36 of the information that was filed last week, so ...

1115
MR. RUBY: But you'll agree with me they're assumptions; right? You assume that there's a pole of 40 feet and that so much of it is buried and so much of it is clearance, so much power space, so much communication space.

1116
MR. FORD: That is in evidence in several place, yes.

1117
MR. RUBY: Right. But in your analysis, it's an assumption, those numbers?

1118
MR. BRETT: Sorry, Mr. Chairman, could Mr. Ruby clarify whether he's asking about the diagram or whether he's asking about statements made in Mr. Ford's evidence about numbers.

1119
MR. RUBY: I'm asking about the paragraph I referred to, the top paragraph on page 2 of Mr. Ford's report that talks about a typical distribution pole, and then normally 6 feet is buried underground. These are --

1120
You've made some assumptions so that you can go ahead and do the things you do in your report; is that right?

1121
MR. FORD: I've drawn the same assumptions that a number of other parties have in the -- I believe I indicated in the response to CEA No. 7 that that was from evidence that was filed by the EDA in the proceeding before the CRTC. So I think they are what I might call generally accepted assumptions.

1122
MR. RUBY: Okay. Fair enough. So I'm going to accept for the moment, for this series of questions, your assumptions. And the CSA standard deals in metric, so you'll forgive me if I try to also deal in metric so we're in the same ballpark.

1123
So my measurement or calculation of a 40-foot pole is that it works out to about 1.2 metres. As we go along, if somebody disagrees, I'm -- 12.2. And that's the number you have as well, I see. So I'll take that.

1124
If you take all the numbers that you've put in, right, and then you take -- so 12.2, and Mr. Ford, you may want to do the math with me to make sure I don't make a mistake. You take 12.2 metres and you take off 3.55 for the electricity facilities, which is what you've got down here on page 2, if you take off 5.25 for the clearance that you've assumed and you bury 1.8 metres, my calculation is that it leaves 1.6 metres; is that right?

1125
MR. FORD: I'm sorry, you lost me at the -- at the clearance. I'm trying to follow along in the evidence here as well, so ...

1126
MR. RUBY: It's 12.2, minus 3.55 for electricity facilities, minus 5.25 --

1127
MR. FORD: 5.25, thank you.

1128
MR. RUBY: -- for clearance, minus 1.8. And I'm just tracking your numbers here.

1129
MR. FORD: Yes.

1130

MR. RUBY: My lawyer's math comes out with 1.6 metres.

1131
MR. FORD: I arrived at the same number.

1132
MR. RUBY: All right. And I take it that 1 metre of that has to be separation between communications wires and the power facilities?

1133
MR. FORD: That is consistent with the typical pole diagrams that our -- have been entered in evidence.

1134
MR. RUBY: Right. And I gather you'll agree with me that the 1 metre is a minimum and it's a standard requirement, isn't it?

1135
MR. FORD: That's my understanding, but I -- but I must say, I drew that information from the typical pole descriptions that I -- they came from.

1136
MR. RUBY: Well, maybe, Mr. Greenham, you can help, then.

1137
MR. GREENHAM: From my planning days, there is an exception to that. The transformer, if it encroaches on that separation space, you are allowed a .75 clearance from that transformer bottom to our strand attachment height if the transformer's grounded.

1138
MR. RUBY: But between wires?

1139
MR. GREENHAM: Between wires, between the hydro neutral or the secondary, it's a minimum of 1 metre, yes.

1140
MR. RUBY: Right. And you know that the simple reason for that is so that when a communications worker is working on its facilities, it can't touch the power tables and electrocute him or herself; right?

1141
MR. GREENHAM: Yes, it's a separation safety zone.

1142
MR. GLIST: It has other purposes, though.

1143
MR. RUBY: It does, but that's a minimum --

1144
MR. GLIST: It allows clearance above grade for primary, which has a higher ground clearance as well, so it's serving power needs.

1145
MR. RUBY: And so, if we take off the 1 metre from the 1.6, Mr. Ford, we just had left, that leaves 600 millimetres.

1146
MR. FORD: Yeah, 0.6 metres, 600 millimetres.

1147
MR. RUBY: Now, turning back to you, Mr. Greenham, since I think you're the closest we have to a technical person, how many -- let me ask this a different way. The communications facilities have to fit inside that 600 millimetres or .6 metres; is that right?

1148
MR. GREENHAM: Not all of them.

1149
MR. RUBY: What doesn't have to?

1150
MR. GREENHAM: The LDCs' communication group can encroach on the power space, because their workers are certified for working in that space.

1151
MR. RUBY: Okay. What about cable television?

1152
MR. GREENHAM: Cable television is not allowed in that space the way things stand now because our workers are not qualified for that.

1153
MR. RUBY: What about the telephone companies?

1154
MR. GREENHAM: The same with them, as far as I am aware.

1155
MR. RUBY: Okay. And when we say you have to fit inside the communication space, that is you have to fit from the top most point you attach to to the lowest point of the sag; is that right?

1156
MR. GREENHAM: No. The sag is not part of the attachment to the pole. The sag is something -- depending on who's on top and who's on the bottom, hydro -- or, I'm sorry, our cables do not sag quite as much as Bell Canada. Bell Canada's made up of 100 percent copper for the majority, but they do have fibre optics as well now too. But their copper wires definitely sag more than ours. So you have to maintain clearances through the sag and the span, but there's different clearances at the pole that you have to maintain.

1157
MR. RUBY: But the clearance from the ground is measured at the centre point of the sag.

1158
MR. GREENHAM: Yes.

1159
MR. RUBY: Not centre point, but the lowest point.

1160
MR. GREENHAM: Yes, sir.

1161
MR. RUBY: And you would agree with me cables always sag?

1162
MR. GREENHAM: It may be minimal in some cases but, yes, they all sag.

1163
MR. RUBY: And that, the exercise we've just went through, that's how you figure out how much room

there is on an existing pole; right? You sort of figure out what everybody's using and you see what's left?

1164
MR. GREENHAM: You measure what everybody else is using, you look at what the existing sag is of the existing utilities, you determine what your minimum sag is and what your sag is going to be with what the cables are that you're going to put on their piece of strand, and then, based on that, you calculate where you can attach on that pole.

1165
MR. RUBY: Or at all?

1166
MR. GREENHAM: Or at all.

1167
MR. RUBY: So, just to be clear, the 2 feet that we all -- that appears frequently in this evidence as being the communications space, that's an assumption too; right? It is very much dependent on what else is on the pole, how much space you get for communications depends on all the other things on the pole, and the CSA and other standards requirements?

1168
MR. GREENHAM: There's streetlights on the poles, there's business organizations that have signage on poles, there's a lot of things that go on poles. So we have to make sure that we have clearance for all of those things.

1169
MR. RUBY: So, Mr. Ford, I take it that if the evidence shows the support that the communication space typically was not 2 feet, if it turned out to be, for example, and this is an assumption, it turned out to be 3 feet, that would change your allocation, wouldn't it?

1170
MR. FORD: I would actually have to do the math. I know it sounds like a straightforward question but it's not a straightforward question, because what we have -- what I have assumed is the usage of 1 foot of communication space, which is not really a physical one foot. It is really a -- it's a conventionally accepted 1 foot because the strands are normally spaced at 1 foot. And then we have also assumed a portion, 50 per cent of the clearance - sorry, terminology - the separation space.

1171
And so, to the extent that it would modify the separation space, there's not a clear answer. I would have to -- you know, I can't answer that in the hypothetical. You would have to look at an actual example. But it isn't just based on the 1 foot. It is the 1 foot plus a portion of the separation space that, for purposes of my calculation, is considered to be space used by a cable attachment.

1172
MR. RUBY: So let me see if I can help you. If you took a metre from the power space, and instead you had 1.6 metres of communication space, that would change your allocation under your model, wouldn't it?

1173
MR. FORD: Again, sorry, I'm not trying to be difficult, but I don't -- there's not a

simple answer to
that question. I would have to actually do the calculations to see what impact it would
have. It would not change the assumption of 1 foot. It would probably -- I mean, the only
reason I can think of why you would do that is if you wanted to provide for more attachments. If you provided for more attachments, then you would be sharing the separation space among more users. And so, if there are more users on the pole, it would
probably be 1 foot, but maybe then you would divide the separation space in three instead of two.

1174
So you see why I'm suggesting that it's not a straightforward calculation.

1175
MR. RUBY: And let's see if Mr. Greenham and I can help you with that. Mr. Greenham, if you
increase the distance between poles, would you agree with me that generally speaking the sag increases too?

1176
MR. GREENHAM: Yes, it does.

1177
MR. RUBY: So the wire sags lower towards the ground.

1178
MR. GREENHAM: Yes, it does.

1179
MR. RUBY: Which means you have to lift the attachment points up to make sure you don't pass the
minimum clearance requirements?

1180
MR. GREENHAM: Depending on the grade of the ground underneath it.

1181
MR. RUBY: Assuming everything else is constant. Is that right?

1182
MR. GREENHAM: Yes.

1183
MR. RUBY: So, Mr. Ford, you'll agree with me that it's not just a matter of how many attachments --

1184
MR. GREENHAM: All users of the pole would also have to move up, because the LDC needs to
maintain clearances just as much as anybody else.

1185
MR. RUBY: Right, right. It's the totals in the communications space that matter; is that right? You
measure from the bottom of the lowest cable to the top of the highest cable?

1186
MR. GREENHAM: And you're saying they're going to maintain that 11 feet no matter what?

1187
MR. RUBY: Well, you have to be above the ground by the same amount; is that right?

1188
MR. GREENHAM: Typically, I don't think that an LDC -- and I may be speaking out of turn because
I have never built a pole line -- but they use up the space that's available to them.
They don't necessarily restrict to exact locations for everything to attach.

1189
MR. RUBY: No, I understand that, but I'm talking about Mr. Ford's model.

1190
MR. GREENHAM: Okay.

1191
MR. RUBY: Let's leave that for the moment. Mr. Chair, I don't know if you planned on taking an afternoon break.

1192
MR. KAISER: Would this be a convenient time to break?

1193
MR. RUBY: It would. Thank you.

1194
MR. KAISER: We'll come back in 15 minutes.

1195
--- Recess taken at 3:27 p.m.

1196
--- On resuming at 3:47 p.m.

1197
MR. KAISER: Please be seated.

1198
Mr. Ruby, before you start, we've had a lot of examination about, I guess, the cost of the poles from these witnesses. Do you not have that cost information? I mean, some of your clients, you represent some of these people who own these poles.

1199
MR. RUBY: Mr. Chair, I may have misspoken, but I was only asking for -- the only cost information I've asked for is with respect to the ten poles in Burlington. I haven't asked for anything else, I don't believe.

1200
MR. KAISER: I'm trying to understand the relevance of this examination that's going on as you try and identify all the pieces of the poles and the proper height and so on. Can you help me?

1201
MR. RUBY: Yes, Mr. Chair. And I'm happy to tell the Board I think I've completed that part of the examination. The point is simply this: Mr. Ford's model is an allocation based on space.

1202
MR. KAISER: Yes.

1203
MR. RUBY: If you add up certain bits and compare them to other bits, you end up with the proportion and he applies that to the cost.

1204
But at risk of being too colloquial, if he has the bits wrong, the amounts, then the 15.5 percent figure he ends up with --

1205
[Audio feedback]

1206

MR. RUBY: -- I'll be submitting, should not be the figure used by the Board. And, of course, there are -- it's a question of testing his evidence. He's made certain assumptions as an expert. I think the point has been made that, for example, the 2 feet that people talk about, it is just an assumption. And that --

1207

MR. KAISER: No, I understand where you're going with that, and I understand the reason why. I guess what I'm wondering is, wouldn't an easier way to get to it, you can just call evidence. Your people know what these poles look like and feel like, and what the proper bits are. Are you going to do that?

1208

MR. RUBY: And I have a witness coming tomorrow who I expect will deal with that.

1209

MR. KAISER: All right. That's fine. I just ...

1210

MR. RUBY: I'm just trying to deal with both sides. There's been a position put forward, and I'll respond both in cross-examination and with direct evidence.

1211

MR. KAISER: Thank you.

1212

MR. RUBY: Mr. O'Brien, generally speaking, is it fair to say that cable companies pay for the poles they use?

1213

MR. O'BRIEN: Generally speaking, yes.

1214

MR. RUBY: And the dispute that's been going on for the last few years has been -- to the extent there is a dispute between individual utilities, it's been about the proportion of pole costs that should be paid by the cable company and the quantum of the costs that are being allocated.

1215

MR. O'BRIEN: It's the pole rate that is in dispute.

1216

MR. RUBY: Those are the two components, though, right, the allocation and the total amount of cost?

1217

MR. GREENHAM: We're not disputing the allocation, the space that's being used. We're disputing the rate that's being applied.

1218

MR. RUBY: Okay. Let me put it this way: And it may be -- I see Ms. Assheton-Smith leaning it, actually, so she may have a comment here.

1219

MS. ASSHETON-SMITH: Well, I think our application is clear in what we're asking for. But perhaps in terms of your specific question, if I could pass that to Mr. Ford, because I think it is really a question related to his evidence.

1220

MR. RUBY: Sure.

1221
MS. ASSHETON-SMITH: And perhaps you could repeat the question.

1222
MR. RUBY: I thought it was self-evident, but I'm often wrong about these things.

1223
The nub of the dispute over rates boils down to a disagreement about how much the total cost should be
and how much of that total cost cable companies should pay; is that right?

1224
MR. FORD: I'm not sure that there is that much disagreement over the costs. There are some difficulties in certain cases with obtaining the costs, but I'm not sure that I would categorize that as -- maybe put that into the category of major disputes.

1225
From my understanding of the process that has gone on, I would certainly say that the difference in
methodology -- the major methodological difference would appear to me to be related to the allocation to
cable.

1226
MR. RUBY: Okay. Well, going back to you, Mr. O'Brien, I take it that cable companies in Ontario do not pay for poles to which they do not attach, or they pay no fee with respect to poles to which they do not attach?

1227
MR. O'BRIEN: That is correct.

1228
MR. RUBY: And I was just noting in the spreadsheet that summarizes the material that the LDCs in Ontario were ordered to provide, for example, for Hydro One, there were about 1.4 million poles that cable companies don't pay for; is that right?

1229
Again, I'm quite happy for you to turn up some point spreadsheet.

1230
MS. ASSHETON-SMITH: Which spreadsheet?

1231
MR. RUBY: The first tab, or, excuse me, the second tab that summarizes all that data in the books that the EDA produced.

1232
MR. GLIST: I would remind you, though, that Mr. Ford answered before, the cost elements that go into the pole rental charge for the poles that are contacted are based upon the totality of the pole universe owned by the utility. So that it is a pole-by-pole charge, but the underlying cost elements relate to the mass asset.

1233
MR. FORD: That is correct.

1234
MR. RUBY: But for a pole charge, you divide that by the number of poles to reduce it to a per-pole cost. You reduce that grand asset total to a pole charge by dividing by the number of

poles.

1235
MR. GLIST: Well, what I'm saying is that the cost of your 65-footers are in the cost that is charged when they contact a 45-footer.

1236
MR. RUBY: Let's try and do it this way. Maybe it will be simpler.

1237
You agreed with me that there are some poles in Ontario that don't have communications attachments, right, Mr. O'Brien?

1238
MR. O'BRIEN: That's correct.

1239
MR. RUBY: And you don't pay for those.

1240
MR. O'BRIEN: That's correct.

1241
MR. RUBY: Okay. And some of them, you'll agree with me, have -- are sufficiently tall and of sufficient class to allow communications attachments without replacing the pole?

1242
MR. O'BRIEN: That's probably right, yes.

1243
MR. GREENHAM: Based on the allocation of allowing space for Bell Canada, they have space for communications.

1244
MR. RUBY: There are probably quite a lot of them, I guess you would agree with me?

1245
MR. GREENHAM: Yeah.

1246
MR. RUBY: Okay. Let's talk about communications attachments for a moment.

1247
From my very limited knowledge, there are three basic kinds of wires that get attached. And, Mr. Greenham, I'm quite happy if you help me with this. So fiber would be one, fiberoptic cable?

1248
MR. GREENHAM: We attach fiberoptic cables, we attach coaxial cables, and we attach drop cables, which are also coaxial.

1249
MR. RUBY: And all of those types of cables, you either attach them to a strand that travels between poles, or they are self-supporting; is that right?

1250
MR. GREENHAM: In some cases they are self-supporting, yes.

1251
MR. RUBY: Okay. And I take it the ones attached to a strand tend to sag less than the ones that are self-supporting?

1252
MR. GREENHAM: The self-supporting cables are just that, they're

self-supporting, so you don't need
the additional anchorage. You are typically going from the pole to the customer.
There may be the odd occurrence where it is going between pole to pole, but that
is a substandard practice that we're trying to get out of. And in most cases, our
distribution cables are on strand.

1253
MR. RUBY: Could I ask the panel to turn to the answer to the CCTA Interrogatory 5H. It's on page --
of that interrogatory response, sort of the bottom third of that page.

1254
MR. SOMMERVILLE: What was that reference again, please?

1255
MR. RUBY: It's the CEA interrogatory to the CCTA, their response to question 5H.

1256
MR. SOMMERVILLE: Thank you.

1257
MR. RUBY: And maybe any member of the panel can help me. Who had the primary responsibility
for answering this question?

1258
MS. ASSHETON-SMITH: That was John Armstrong.

1259
MR. RUBY: Okay. So Mr. Armstrong, this, I take it, is a list of equipment that typically gets attached
to cable facilities or -- excuse me, gets attached to either poles or wires, attached on
poles with respect to cable facilities.

1260
MR. ARMSTRONG: I believe that's correct, from my limited technical knowledge, yes.

1261
MR. RUBY: Well, I'm quite happy if Mr. Greenham wants to help you with this line of questioning. I
notice power supplies are listed here. And again, I mean, we can translate this back and
forth, but for simplicity, it looks like power supplies are 2-foot-by-2-foot-by-1-foot
boxes; is that fair to call them that?

1262
MR. GREENHAM: It's fair to call them that. And they're not actually placed in the communication
space, they're typically placed below the communication space because there's
not the same requirement for separation from the public.

1263
MR. RUBY: All right. And it looks like from your answer here, it says, "That's three batteries and
sometimes there are six batteries." Does that mean that the box is twice as big?

1264
MR. GREENHAM: With new technologies, that doesn't necessarily mean the box is twice as big, but
in some cases it is. Batteries have gotten smaller.

1265
MR. RUBY: Okay. And these batteries, are these used for high-speed Internet service?

1266

MR. GREENHAM: I'm sorry?

1267

MR. RUBY: These batteries, are they used for high-speed Internet services?

1268

MR. GREENHAM: These batteries are used as back-up. If the LDC's power was to go down, the customer would still have cable at their house. The batteries actually back up the entire distribution system so that customers can maintain their existing service. If they had a generator, they could still get cable TV.

1269

MR. RUBY: Okay. And were these in use ten years ago?

1270

MR. GREENHAM: Ten years ago power supplies have always been there to supply the power to our plant so that the plant actually ran. Ten years ago, not in all cases would they have had power -- or batteries with it because the requirement wasn't there as much. If the power went out back then, the TV went out, and that's the way we thought of things. Today, people have modems at their house, and their computers already have a UPS, and they would still want their computers to run. So it works for both the cable TV side of things, it works for the modems as well.

1271

MR. RUBY: They weren't widely used ten years ago, but there might have been some of them.

1272

MR. GREENHAM: Yes, that's right. They would have been smaller at that time. They would have been a foot by a foot instead of 2 feet by 2 feet.

1273

MR. RUBY: Thank you. Some of these other equipment, can you just help me? The optical nodes, and I'm just going down your list here that's at H, are they attached to the pole or the wire?

1274

MR. GREENHAM: Typically, the optical nodes are attached to the support strand.

1275

MR. RUBY: Okay, and RF amplifiers?

1276

MR. GREENHAM: They're what's attached to the coaxial cables, again, that's on the strand. In some cases there might be some attachments on the poles in the northern systems because they have difficulty accessing them with snow and so forth, so they have an arrangement with the LDC to be able to place it on the pole.

1277

MR. RUBY: And I think you told me power supplies are stuck on the pole?

1278

MR. GREENHAM: Yes, that's correct, below the communications space.

1279

MR. RUBY: And passive components?

1280

MR. GREENHAM: Passive components are also attached on the strand, directly to the coaxial cable.

1281
MR. RUBY: Okay. Then the next couple are the cables themselves, and then an optical cable splice enclosure, that sounds like it's attached to the cable; is that right?

1282
MR. GREENHAM: It's attached to the fiber cable and is supported by the support strand. It's not attached to the pole.

1283
MR. RUBY: So for the items that are attached to either the cable or the support strand, is it fair to say that, particularly in the winter with ice and snow loading, they cause the cable to sag more than it would otherwise?

1284
MR. GREENHAM: Yes, and in those locations where it becomes a clearance issue, those locations are actually -- those pieces of equipment are put underground in pedestals.

1285
MR. RUBY: Now, you mentioned that power supplies actually go in the clearance space, that --

1286
MR. GREENHAM: Well --

1287
MR. RUBY: They go below the communications space.

1288
MR. GREENHAM: They go below the communication space.

1289
MR. RUBY: Right. So if, to use Mr. Ford's assumption, there's two feet of communications space, and there's a 2-by-2-foot box bolted to the pole beneath it, that's, in the direct sense, using 2 more feet of space; isn't it?

1290
MR. GREENHAM: It has a separate attachment or it has a separate permit for that as well. So it's currently with most, if not all, of the LDCs, there's a strand attachment permit, and then there's a power supply permit.

1291
MR. RUBY: In Ontario, do you pay to attach a box like that to a pole?

1292
MR. GREENHAM: Yes.

1293
MR. RUBY: Extra?

1294
MR. GREENHAM: Yes.

1295
MR. RUBY: Okay. And Mr. Ford, does that type of charge -- is that accommodated in your model?

1296
MR. FORD: No, sir, it is not.

1297
MR. GLIST: Well, I think, actually --

1298
MR. RUBY: Well, to --

1299
MR. FORD: No, perhaps Paul wants to disagree with me. I --

1300
MR. GLIST: Well, what I wanted to say is you will recall this morning that I mentioned that Mr. Ford's cost allocation formula assigns 2.6 feet of space to an attachment that actually consumes a few inches in the ordinary course. So we're looking now at the various cases where you go a distance down the road and you find yourself with a battery backup box below the communications space. There's an example where it's more than those few inches. You could take the path of trying to fine-tune the equation, I would submit that it's already subsumed in the 2.6 feet of average space that is being assigned in the base case to a facility that takes a few inches.

1301
MR. FORD: That's fair enough, and I would agree with that.

1302
MR. GREENHAM: If I could add -- I'm sorry, the power supply is basically separated or -- you have one power supply for every 500 customers, so it's not on every pole, it's on a few poles.

1303
MS. ASSHETON-SMITH: I could add too that the need for the battery backup is driven by the fact that the power source is not 100 per cent reliable, and wouldn't need battery backups, of course, if the power source was reliable.

1304
MR. RUBY: So you want a discount from your electricity rate?

1305
Let's talk for a minute, if we can, about the cable television business. And Mr. O'Brien, would you agree with me that the cable TV business is a facilities-intensive business? Is that a fair characterization?

1306
MR. O'BRIEN: I think that's a fair characterization, yes.

1307
MR. RUBY: Cable companies build plants; right?

1308
MR. O'BRIEN: They don't what?

1309
MR. RUBY: They build plants.

1310
MR. O'BRIEN: They don't build plants -- they build plants but they build poles.

1311
MR. RUBY: But they put up wires and all the other things we've seen.

1312
MR. O'BRIEN: It's also very much a programming service.

1313

MR. RUBY: And to put up that plant it takes capital; right?

1314
MR. O'BRIEN: That's correct.

1315
MR. RUBY: And there's a cost to that capital.

1316
MR. O'BRIEN: That's correct.

1317
MR. RUBY: And the less cable companies need to invest in plant, all else being equal, they lower their costs of providing their services.

1318
MR. O'BRIEN: They don't spend the money, they do not service the customers.

1319
MR. RUBY: Let me put it to you this way. The CCTA said, and we've talked about this before, that there are about 250 cable-only poles in Ontario; is that right?

1320
MS. ASSHETON-SMITH: What we said was that we own about, approximately, 250 poles, most of which were previously hydro-owned poles installed by hydro which were then passed -- transferred to cable companies after being decommissioned.

1321
MR. RUBY: For those decommissioned poles, do you pay for them?

1322
MS. ASSHETON-SMITH: We purchase them?

1323
MR. GREENHAM: We purchase them for about a dollar.

1324
MR. RUBY: Okay.

1325
MR. GLIST: And that count doesn't include the poles that are made ready because the title's been invested over in the LDC.

1326
MR. RUBY: That's not included in the 250?

1327
MR. GLIST: Right. No.

1328
MR. RUBY: Right.

1329
MR. GLIST: So, in terms of tracking capital expenses, that's all I'm saying.

1330
MR. RUBY: No, I understand. But the CCTA's answer at number 2(b) to the CEA's interrogatory was that of the 5.5 billion identified in its original application that had been spent in facilities, I think the answer was that there were "virtually none," I think was the wording, on poles.

1331
MS. ASSHETON-SMITH: I'm sorry, can you just point us to where that's

coming from?

1332
MR. RUBY: Sure. The reference is paragraph 14 of the original evidence.

1333
MR. BRETT: CEA's evidence?

1334
MR. RUBY: No, the CCTA's, the second to last sentence, it says:

1335
"Cable operators have invested more than 5.5 billion in their distribution systems over the past four
years."

1336
And then, at the answer to question 2B, that's where you describe the 250 poles?

1337
MS. ASSHETON-SMITH: That's correct.

1338
MR. RUBY: And I take it, Mr. O'Brien, the cable companies save money by not having to build poles
of their own?

1339
MR. O'BRIEN: Capital costs, yes.

1340
MR. RUBY: Right. And they invest that capital in other things, the saved capital?

1341
MR. O'BRIEN: They invest it in plant, yes.

1342
MR. GLIST: These are not actually choices, because --

1343
MR. RUBY: Well, Mr. --

1344
MR. GLIST: -- the option of investing capital in a parallel pole plant is not open to us.

1345
MR. RUBY: Well, Mr. Glist, you've made that point repeatedly, I think, to Ms. Friedman, and I think
the Board has an appreciation for that. I don't want to speak for them. I'm just trying to
get an understanding of what happens to the money. That's all.

1346
MR. GREENHAM: Okay. But the option of not building our own plant and not going on the LDCs'
poles or the joint-use poles with Bell Canada is to go underground, and there are
no savings to go underground.

1347
MR. RUBY: Right. I hear what you're saying.

1348
Now, at interrogatory -- or the CCTA's answer to CEA Interrogatory No. 8, this was a question directed
at the tenancy versus ownership portion of the CCTA's original application. You'll tell me if I'm not
summarizing this fairly, but it appears that the CCTA is saying that, among other things, that an owner
has the advantage of carrying net-embedded costs on its balance sheet and being able to use

the poles as
collateral. Is that an answer that was provided by the CCTA?

1349
MS. ASSHETON-SMITH: Yes.

1350
MR. RUBY: Okay. So I'm just trying to understand this. Is the CCTA's position that it would rather tie up millions of dollars in capital and poles, that's its preference, rather than have funds for other uses?

1351
MS. ASSHETON-SMITH: I'm sorry, I'm not sure I understand your question. But once again, if you're asking what we prefer, it's not a matter of preferring anything. We don't have an option.

1352
MR. RUBY: Well, I mean, this is the basis, in part, of what the CCTA says is the basis for LDCs having a benefit of ownership versus tenancy. So what I'm trying to get at is, how exactly is it a benefit to have invested all this money in poles when the tenants don't have to? Like, just on the capital cost issue, I have to admit, I just don't get it.

1353
MS. ASSHETON-SMITH: Well, I think the answer, if you read beyond that, there are a number of ownership benefits that are highlighted in this paragraph --

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MR. RUBY: Oh, I understand --

1355
MS. ASSHETON-SMITH: -- and --

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MR. RUBY: Sorry, I don't mean to cut you off.

1357
MS. ASSHETON-SMITH: You just did.

1358
MR. BRETT: Mr. Chairman, perhaps he can let the witness finish the answer.

1359
MR. RUBY: No, no, please do.

1360
MS. ASSHETON-SMITH: There's two aspects to this question, actually. One is that the ultimate right of ownership is the ability to control the asset, and deny access to that asset. Moreover, under a rate-of-return regulation, there is no risk to the LDCs since it will recover its cost through the rate-base approach.

1361
So, under rate-of-return regulation, there is a benefit to the LDC in building up its rate base as much as it can. There absolutely is an ownership benefit to the LDC in these circumstances.

1362
MR. RUBY: If the situation was reversed, though, you wouldn't have that benefit. You're not rate-of-return regulated.

1363
MS. ASSHETON-SMITH: We are not regulated at all in Ontario anymore. But

we're not here to set
cable rates.

1364

MR. RUBY: No, I quite agree.

1365

One of the other points I see in the second paragraph that's marked page 14 of 17, in the same interrogatory response, is that -- this is sort of midway through the paragraph:

1366

"The owner of a pole can also generate revenue from leasing surplus capacity on the pole."

1367

Do you know what the net revenues are related to attaching things to a pole?

1368

MS. ASSHETON-SMITH: I believe we asked for that information in our interrogatory requests
from the EDA for those actual revenues from attachments, and I think that information was not available. It is?

1369

MR. RUBY: Well, did you ask what it was for streetlights?

1370

MR. GREENHAM: It's my understanding, in dealing with the Mearie group, that they don't charge
their shareholder for those attachments. The city owns those attachments and they don't charge them back, because they are the owner of the LDC.

1371

MR. RUBY: Okay. So no revenues there. Is their power pole -- okay.

1372

I take it that, and maybe Mr. Greenham, I should direct this to you, I take it that you accept that there are
safety restrictions that apply to everybody who attaches to a pole. And by "attaches," I mean in the
broadest possible sense.

1373

MR. GREENHAM: Yes. Does the public know about all of those requirements? I don't think so. But
the public does make attachments.

1374

MR. RUBY: But you know about them.

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MR. GREENHAM: Yes, I do.

1376

MR. RUBY: Mr. O'Brien, I take it cable companies generally in Ontario know about them.

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MR. O'BRIEN: Yes.

1378

MR. RUBY: And they follow them?

1379

MR. O'BRIEN: Yes.

1380

MR. RUBY: And they do that, in part, under the direction of the distributors; isn't that right?

1381

MR. O'BRIEN: Well, they're also governed by any number of federal and

provincial safety bodies. And also, the joint-use agreement calls for any number of safety clauses. So, yes, it's any number of factors that the gear to safety rules.

1382
MR. RUBY: And it's the same for technical and operational requirements, everybody just has to follow them. That's right, isn't it?

1383
MR. O'BRIEN: Yes.

1384
MR. RUBY: And can we agree, to keep it simple, that there are some poles located in rural areas of Ontario?

1385
MR. O'BRIEN: Yes.

1386
MR. RUBY: And some located in urban areas?

1387
MR. O'BRIEN: Yes.

1388
MR. RUBY: And let's see if we can further agree that, in urban areas, you typically need more poles closer together?

1389
MR. GREENHAM: I don't think that you need them any closer together than you do in rural applications. It all depends on the lay of the land and clearances that you're able to maintain.

1390
MR. RUBY: Do urban poles typically have to be higher than rural poles?

1391
MR. GREENHAM: Again, it depends on the situation.

1392
MR. RUBY: I'm saying typically.

1393
MR. GREENHAM: It also depends on the LDC. If you drive through Mississauga, you're going to find that a majority of the poles are very big poles, whereas if you drive through Hamilton, they're not as tall.

1394
MR. RUBY: Right. Is it fair to say that in urban areas, to plant a new pole, you've got to break through either concrete or asphalt, some kind of surfacing material to put the pole in?

1395
MR. GREENHAM: Or grass.

1396
MR. RUBY: Or grass. But sometimes or a lot of the time, it's concrete or asphalt?

1397
MR. GREENHAM: I would not be able to hazard as to if it's 50/50 or not. But it could be anywhere -- any number.

1398
MR. RUBY: Okay. Well, maybe I can make this simpler. Is it more expensive to install poles in rural areas than urban areas, generally speaking?

1399
MR. GREENHAM: I would make that assumption, depending on the ground.

1400
MR. RUBY: Is it fair to say that there are new power poles being constructed in Ontario all the time?

1401
MR. GREENHAM: I would assume so.

1402
MR. RUBY: Well, you know that's the case, don't you? You've seen it happen?

1403
MR. GREENHAM: I can say that today, driving here, I didn't see any poles going in.

1404
MR. RUBY: Maybe not today. You know, I don't think I saw any poles driving in today, but you can agree with me that all poles do get replaced over time.

1405
MR. GREENHAM: I would hope so.

1406
MR. RUBY: Okay. Do cable companies typically have municipal access agreements?

1407
MR. GREENHAM: Not in all cases, and I can only speak for Cogeco, but not in all cases do we have it.

1408
MR. RUBY: To the best of your ability, what percentage of the time?

1409
MR. GREENHAM: I have one municipal access agreement that's executed.

1410
MR. RUBY: Mr. O'Brien, maybe you can help. Does the CCTA help its members with municipal access?

1411
MR. O'BRIEN: Not to negotiate them. But most of our members, certainly the smaller members, do not have municipal access agreements.

1412
MR. GREENHAM: If I might, sorry. Typically, the requirement for municipal access agreements, the push for them died substantially after the CRTC was ruled to have jurisdiction, and I have not had any municipality ask me to execute one since then.

1413
MR. RUBY: Okay. Does Cogeco participate in -- I think they're known as public utilities co-ordination committees?

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MR. GREENHAM: Yes.

1415
MR. RUBY: Can you tell the Board what this is.

1416
MR. GREENHAM: A PUCC committee is a group where members from all of the utilities get together to plan their capital works, others' capital works, and general use of the right of way. We have representatives that attend all of the PUCC meetings across Ontario, anywhere from Windsor to North Bay to Cornwall. I've participated on a PUCC in Hamilton, and Bell Canada is there, the LDC is there, the City is there, the sewer people are there. And we review everybody's capital works for the year and plan the useage of the right of way based on that.

1417
MR. RUBY: Mr. Armstrong, does Rogers also participate in public utilities co-ordination committees?

1418
MR. ARMSTRONG: Yes, we do.

1419
MR. RUBY: Thank you. Mr. Greenham, is it fair to say that when major pole work is being done, that is, lines are being replaced or moved or upgraded, cable companies are consulted as to whether they're going to continue to attach?

1420
MR. GREENHAM: Typically, they are asked if they're going to continue to attach, yes.

1421
MR. RUBY: And in some cases I gather they are given make-ready options?

1422
MR. GREENHAM: It depends on who's forcing the relocation of the pole. If it's the municipality that's widening a road allowance, they will, basically, pick up as part of their project all of those relocations. And in most forced instances of that nature, it's a new construction and there is not a lot of make-ready requirements.

1423
MR. RUBY: And Mr. Armstrong, is it the same for Rogers?

1424
MR. ARMSTRONG: Again, I have limited technical knowledge. I'm not sure that I can really answer that question.

1425
MR. RUBY: If I can, if we can, let's talk a little bit about the communication services that are offered, and I'm happy to take this from Mr. Armstrong or Mr. O'Brien. I take it, from the evidence that's been put in, that the cable companies offer, roughly speaking, cable television, digital cable television, high-speed Internet, high definition television, video-on-demand, and pay-per-view. Is that a complete list or have I missed something?

1426
MS. ASSHETON-SMITH: I should point out, that is, I think, the complete list of all services that are offered by some cable companies. Not all cable companies offer all of those services.

1427
MR. RUBY: Okay.

1428
MR. GREENHAM: If I may again, Cogeco is getting into the datacom business,

again.

1429
MR. RUBY: Sorry, what's datacom.

1430
MR. GREENHAM: Datacom is more than just high-speed Internet for businesses.

1431
MR. RUBY: Are any of the CCTA members in Ontario intending to provide VoIP services?

1432
MS. ASSHETON-SMITH: I believe there are some public announcements that have been made by the owners of cable companies indicating their intent to enter that business, yes.

1433
MR. RUBY: Well, in that case, Ms. Assheton-Smith, maybe you can explain to the Board what VoIP is.

1434
MS. ASSHETON-SMITH: Actually, I prefer to avoid the use of the term VoIP if at all possible, I prefer to call it digital telephone. It's much more user-friendly. It really is just the ability to make a voice phone call using Internet protocol technology. So as long as you have a high-speed broadband Internet connection, either through your cable company or through a DSL provider, you can make a local phone call virtually anywhere in the world.

1435
MR. RUBY: Just to unpack that for the Board. A DSL provider would be who?

1436
MS. ASSHETON-SMITH: That would be the incumbent telephone companies that provide high-speed Internet services.

1437
MR. RUBY: So, Bell for example?

1438
MS. ASSHETON-SMITH: Bell, for example, yes.

1439
MR. RUBY: And I gather that there are some companies in Canada that already offer the service you don't want to call VoIP?

1440
MS. ASSHETON-SMITH: I believe both Bell and Telus already have a VoIP or digital telephone offering as well Primus. There may be some others.

1441
MR. RUBY: And again, I understand that there was a hearing at the CRTC a few weeks about the regulation of what you don't want to call VoIP services?

1442
MS. ASSHETON-SMITH: Yes, that's correct.

1443
MR. RUBY: Did the CCTA make any submissions in that proceeding?

1444
MS. ASSHETON-SMITH: Yes, we made extensive submissions in that proceeding.

1445
MR. RUBY: And did you tell the CRTC that some of the CCTA members hope to offer VoIP?

1446
MS. ASSHETON-SMITH: I have not reviewed the transcript from our hearing at the CRTC, nor was I on the panel, but I assume that's what they told the Commission, yes.

1447
MR. RUBY: Okay. Did anybody, on behalf of the CCTA or any of the cable companies, tell the CRTC that the rollout of this new service -- because I don't want to say VoIP again -- depended on how much, ultimately, cable companies were charged for power pole access?

1448
MS. ASSHETON-SMITH: As I say, I don't know what was suggested in the course of that proceeding.

1449
MR. RUBY: Would you agree with me that you would be surprised if that came up?

1450
MS. ASSHETON-SMITH: I would acknowledge I would be somewhat surprised if power pole access came up in that proceeding.

1451
MR. RUBY: Of the services that we've just talked about, the digital TV through Internet, were any of those services offered before 1997?

1452
MR. GREENHAM: Cable modems and high-speed Internet would have been available before '97.

1453
MS. ASSHETON-SMITH: I believe pay-per-view would have been available before 1997 as well.

1454
MR. RUBY: Pay-per-view. And to the extent high-speed Internet was available, would you agree with me that it would have been on the most minor of scales in 1997?

1455
MS. ASSHETON-SMITH: Roger's wave product had incredible takeup right from the start. I don't have the numbers with me in terms of their takeup, but I'm not sure it matters.

1456
MR. RUBY: Mr. Armstrong, do you know?

1457
MR. ARMSTRONG: I agree with Ms. Assheton-Smith that there was incredible takeup of the wave product. It started in 1995, but again, I don't have that number right here.

1458
MR. RUBY: Just to we have the timing right, the last CCTA/MEA pole attachment agreement expired in 1996; is that right?

1459
MR. GLIST: That's correct.

1460
MS. ASSHETON-SMITH: That's correct.

1461
MR. RUBY: Right. So Mr. O'Brien, how -- I take it cable television -- I shouldn't say that. The revenues of the CCTA members in Ontario have increased since 1996; is that right?

1462
MR. O'BRIEN: Yes.

1463
MR. RUBY: And do you know how many times they've increased?

1464
MR. O'BRIEN: I have no idea.

1465
MR. RUBY: Well, maybe we can do this by focussing on one of the services, the high-speed Internet that just got mentioned. I take it at least before 1995 there was no high-speed Internet provided by cable companies in Ontario?

1466
MS. ASSHETON-SMITH: Not to my knowledge.

1467
MR. GREENHAM: Prior to that there might have been some direct links. I know that I was part of the build in Markham to build a coaxial line from one Magna office to the other Magna office so that they can have data services between those offices.

1468
MR. RUBY: Okay. Can you turn to the CCTA answer to CEA Interrogatory No. 5, please. And in particular, 5D, "D" as in "David."

1469
The CEA had asked a question about market definition, size of markets and entities of competitors, and the answer provided was that the CRTC could only provide answer on a national basis. So that's the data that I'll use.

1470
Am I reading this right to say that cable companies in Canada made something like 9. -- 930 million, more or less, dollars, from Internet access?

1471
MS. ASSHETON-SMITH: I'm sorry. Can you just repeat?

1472
MR. RUBY: There's two headings here, broadcast distribution revenues --

1473
MS. ASSHETON-SMITH: Yeah.

1474
MR. RUBY: -- and I'm looking at Internet access revenues.

1475
MS. ASSHETON-SMITH: Yes.

1476
MR. RUBY: So I'm just making sure I understand that right, that the CRTC has determined that cable companies made something over $900 million.

1477

MS. ASSHETON-SMITH: That is a national figure, yes.

1478
MR. RUBY: Right.

1479
MR. FORD: And the term "made" may not be appropriate. They received revenues of. "Made" sounds like a profit figure. That's all I'm -- I'm just trying to distinguish it.

1480
MR. RUBY: I'm not trying to depart from what the CRTC says. It says "revenues" --

1481
MR. FORD: No, fair enough. I just thought I'd emphasize that.

1482
MR. RUBY: And this is a 2003 figure; isn't that right?

1483
MS. ASSHETON-SMITH: Yes.

1484
MR. RUBY: Okay. Do you know how much of that would have been made in Ontario, or was made in Ontario, I should say?

1485
MS. ASSHETON-SMITH: We did not have the total revenues for cable companies on an Ontario breakdown. That information was not available to us.

1486
MR. RUBY: For an assumption purpose, would it be fair to say half? Would you pick a third, two-thirds?

1487
MS. ASSHETON-SMITH: Half would be too much.

1488
MR. RUBY: A third too little?

1489
MS. ASSHETON-SMITH: Without further analysis, I would have to do an analysis of the total number of cable companies in Ontario and divide it by the total amount of revenues.

1490
MR. RUBY: Let's see if we can agree on something. Hundreds of millions, so more than 100 million.

1491
MS. ASSHETON-SMITH: I hate to make assumptions without the actual data in front of me.

1492
MR. RUBY: Okay. That's fine.

1493
And Internet access revenues are made, in part, from wires that are attached to power poles; is that right?

1494
MS. ASSHETON-SMITH: I'm sorry, could you repeat that?

1495
MR. RUBY: And maybe I should ask if there's somebody else here who's better --

1496

MS. ASSHETON-SMITH: No, and I apologize, I'd like to continue.

1497
MR. RUBY: The Internet access revenues --

1498
MS. ASSHETON-SMITH: Yes.

1499
MR. RUBY: -- as the CRTC calls them, are made, at least in part, from wires and other facilities hung on power poles?

1500
MS. ASSHETON-SMITH: The service that is provided through high-speed Internet flows through the cable attachment that is used to provide other communications services.

1501
MR. RUBY: And just so we're clear, Internet access revenues, for cable companies, at least, that must mean high-speed Internet; right?

1502
MS. ASSHETON-SMITH: Cable companies do not offer dial-up. It's a pure broadband service. And I should point out that the capital expenditures required to upgrade the plant to provide high-speed service, as pointed out in the evidence, was in the billions of dollars over the last decade. And this has taken place in a competitive environment in which satellite companies have captured almost a quarter of the -- over a quarter of the share of the market.

1503
And to come back to your earlier question about rate-of-return regulation, cable is not rate-of-return regulated because it does operate in a competitive market.

1504
MR. RUBY: Let's talk about that for a minute. Without going to the references, I gather the CCTA's evidence is that its price for the services it offers is price-elastic? Maybe I'll put it this way, much more simply: There's a lot of competition, and you can't really raise your prices in the face of all that competition; is that fair?

1505
MS. ASSHETON-SMITH: The ability of cable companies to increase their rates to subscribers is constrained by the competitive market in which they operate, yes.

1506
MR. RUBY: Is it fair to say heavily constrained?

1507
MS. ASSHETON-SMITH: It's a highly competitive market, yes.

1508
MR. RUBY: And that's the same for the satellite providers you just mentioned?

1509
MS. ASSHETON-SMITH: They operate in the same market, yes.

1510
MR. RUBY: And the same for, I think it's called, wireless cable? The only example I can think of is Look TV.

1511
MS. ASSHETON-SMITH: Yes.

1512
MR. RUBY: And that's the same for Internet access?

1513
MS. ASSHETON-SMITH: Yes, Internet access is also a very highly competitive retail market.

1514
MR. RUBY: And I take it that means there's a lot of pressure on cable companies to be efficient --

1515
MS. ASSHETON-SMITH: Absolutely.

1516
MR. RUBY: -- and lower their costs?

1517
MS. ASSHETON-SMITH: That would be correct of any enterprise operating in a competitive market, yes.

1518
MR. RUBY: So a reduction in the cost input, if the cost input is not one that its competitors have, would be a competitive advantage. Try this again, because I don't mean to put it as theoretically as it came out.

1519
Satellite and wireless cable companies don't hang wires on power poles; is that right?

1520
MS. ASSHETON-SMITH: That's correct.

1521
MR. RUBY: If you reduce the cost of that input to cable company service, that doesn't reduce the cost of satellite providers, for example? If the Board lowered rates to a dollar for power pole access, that wouldn't reduce the costs of satellite companies?

1522
MS. ASSHETON-SMITH: Satellite companies aren't faced with the monopoly supply of an essential facility, except to the extent that they need transponder space, which correspondingly wouldn't impact us if the cost of transponder space was decreased as well, if that's --

1523
MR. RUBY: They have some cost inputs that you don't share.

1524
MS. ASSHETON-SMITH: And they have some that we don't share.

1525
MR. RUBY: Right. And one of those is power poles.

1526
MS. ASSHETON-SMITH: Right.

1527
MR. RUBY: Are you familiar with the Board's Affiliates Relationship Code?

1528
MS. ASSHETON-SMITH: Unfortunately I am only very superficially familiar with that document.

1529
MR. RUBY: Is there anyone else on the panel who wants to answer a question about that?

1530
Let me try generally and see if anybody steps up to the plate. Does the code apply -- is it the CCTA's position that the code applies to the telecommunications affiliates of distributors?

1531
MS. ASSHETON-SMITH: That's my understanding.

1532
MR. RUBY: Okay. Have any complaints been made by the CCTA members to the Board, under the Affiliates Code, with respect to telecom affiliates of distributors?

1533
MS. ASSHETON-SMITH: CCTA has not made any complaints. As I said, we're only superficially aware of that code. And not only that, I think we were uncertain of the Board's jurisdiction to deal with our issues until very recently.

1534
MR. RUBY: Right. What about Rogers and Cogeco? Any complaints under the Affiliates Relationship Code to the Board?

1535
MR. ARMSTRONG: From Rogers' perspective, I'm not aware of any complaints.

1536
MR. GREENHAM: There's no official complaints that I'm aware of.

1537
MS. ASSHETON-SMITH: I'd have to be honest. I don't think any of us are aware of the complaints mechanism under the Affiliates Relationships Code, which could, perhaps, explain why we haven't made any. I wasn't even aware we could make those complaints.

1538
MR. RUBY: All right. I just wanted to know if it's happened.

1539
Earlier, I can't remember who it was, somebody mentioned ILECs, I think, and just I wanted to clarify to the Board, maybe, Ms. Assheton-Smith, you can tell the Board what an ILEC is.

1540
MS. ASSHETON-SMITH: An ILEC, it's an acronym for an incumbent local exchange career, which are the incumbent telephone companies like Bell and Telus, in their own territories.

1541
MR. RUBY: To take Bell as an example, its local telephone business is still regulated by the CRTC with respect to prices?

1542
MS. ASSHETON-SMITH: Yes, it is.

1543
MR. RUBY: And some of the other services it provides to others are also price-regulated?

1544
MS. ASSHETON-SMITH: That's correct.

1545
MR. RUBY: And not to put too fine a point on it, that's because they have a near monopoly, isn't it?

1546
MS. ASSHETON-SMITH: I think we'd suggest that 97 plus percent market share would, yes, define them as a monopoly.

1547
MR. RUBY: All right. And Bell owns a lot of poles in Ontario, doesn't it?

1548
MS. ASSHETON-SMITH: I have no knowledge of the number of poles that Bell owns in Ontario. We do know that they have joint-use reciprocal arrangements with Hydro One, but I don't have the number of those poles.

1549
MR. RUBY: And, well, some of those poles are used by cable companies; isn't that right?

1550
MS. ASSHETON-SMITH: Some of the joint-use poles? Yes.

1551
MR. RUBY: But joint-use with Bell as opposed to joint-use with the power companies.

1552
MS. ASSHETON-SMITH: The Bell/Hydro One joint-use poles are used by the cable companies, yes.

1553
MR. RUBY: And the CRTC regulates the rate for those attachments?

1554
MS. ASSHETON-SMITH: Only with respect to Bell's provision of access to its poles.

1555
MR. RUBY: And I take it then we can agree that telephone poles are a monopoly asset.

1556
MS. ASSHETON-SMITH: Yes, we've argued, and I think it's clear, that they are an essential facility for the provision of our service and access to those telephone poles is required, and those poles are regulated at a tariffed rate, uniform rate, across the country of $9.60.

1557
MR. RUBY: Thank you.

1558
While we're on this topic maybe we can clear up one thing. The Hydro One/Bell Canada joint ownership
agreement that's in evidence in this proceeding, I notice at paragraph 8 of the CCTA application, it says
Hydro One has, is it 69 percent of the poles and 31 percent Bell. And the CEA evidence says it's 60/40.
I'm happy to give you the references for the two.

1559
MS. ASSHETON-SMITH: If you can correct our information on that, you probably have better access to that percentage than we do. Our understanding was in Ontario it was 60/40 and I think it was in Quebec that it's 69/31.

1560
MR. RUBY: Okay. Will you accept that the CEA figure's correct at 60/40 or do you want to sort of go on with this?

1561
MS. ASSHETON-SMITH: I think we'd accept that.

1562
MR. RUBY: Thank you.

1563
You mentioned a few minutes ago, Ms. Assheton-Smith, that cable companies are no longer price regulated in Ontario.

1564
MS. ASSHETON-SMITH: That's correct.

1565
MR. RUBY: They don't have any legal obligation to serve either anymore, do they?

1566
MS. ASSHETON-SMITH: No, with the rate deregulation the commission also deregulated the requirement to serve.

1567
MR. RUBY: So they don't have any obligation to hook people up to cable television?

1568
MS. ASSHETON-SMITH: No regulatory obligation, only the need to respond to competitive cues.

1569
MR. RUBY: Right, and they don't have any regulatory obligation or other legal obligation, for that matter, to provide telecommunication service? I mention that only because of the name change.

1570
MS. ASSHETON-SMITH: The regulatory framework under which cable will offer telecommunications, voice telecommunications service, has yet to be determined.

1571
MR. RUBY: At the moment, though, you're not compelled by law to offer it?

1572
MS. ASSHETON-SMITH: No. Because we're not, obviously.

1573
MR. RUBY: Right. And maybe Mr. O'Brien, you may be able to help me with this, telecommunications affiliates of distribution companies have, for want of a better word, wires over which they provide telecommunication services; is that right?

1574
MR. O'BRIEN: That's correct.

1575
MR. RUBY: And those are broadband services or capacity?

1576
MR. GREENHAM: Yes, all of our deliveries are typically considered broadband.

1577
MR. RUBY: I'm talking for the moment about, and I may have been unclear, the telecom affiliates of distributors. They're not offering twisted pair.

1578
MR. GREENHAM: Oh, okay. I'm sorry. They're not twisted pair, and I'm not sure exactly what services they offer. They could offer anywhere from a DS-3 to a full SONET ring.

1579

MR. RUBY: When you want to provide services to your customers in new areas or areas where you don't have facilities, have either Rogers or Cogeco ever tried to get the telecommunications affiliate of the distributor to carry your services over their facilities?

1580
MR. ARMSTRONG: I can respond from Rogers' perspective. Actually, what we have done is we have swapped fibres with the local distributor's telecommunications affiliate.

1581
MR. GREENHAM: And we have done the same thing with like-for-like exchanges of fibre.

1582
MR. RUBY: Right. And have you ever tried to put services over their facilities?

1583
MR. GREENHAM: Their own facilities? Like, typically, when you do the like-for-like swap, the ownership of those fibres swap as well. So we put our services across the fibres that we acquire, we don't put the services across the fibres that they have existing, but it's running through the same cable in the same sheath.

1584
MR. RUBY: Let me ask you this. When you provide high-speed Internet services, when you connect somebody in Vancouver to somebody in St. John's, and somebody sends a little packet of data from one side of the country to the other, does that packet of data travel over facilities that are entirely owned by Cogeco, for example?

1585
MR. GREENHAM: Definitely not, no.

1586
MR. RUBY: Who else --

1587
MR. GREENHAM: Like, our -- it can go from our facilities into our hub area, and then from our hub it goes out into the worldwide web, and it can go to Singapore before it goes to Vancouver.

1588
MR. RUBY: So to provide the services you provide, you don't have to own every piece of wire and piece of equipment to provide the service?

1589
MR. GREENHAM: To provide the service to our customer -

1590
MR. GLIST: You need --

1591
MR. RUBY: Sorry, Mr. Glist, I'm quite happy to take your answer, but in the same way I don't like to interrupt Mr. Greenham. I don't think anybody should.

1592
MR. GREENHAM: Can you repeat the question.

1593
MR. RUBY: This is the packet that goes from one side of the country to the other.

1594
MR. GREENHAM: Right.

1595
MR. RUBY: A cable company doesn't need to own, to do its business, every wire, every piece of equipment, to get the packet from one place to another.

1596
MR. GREENHAM: We need to own, from our customer to where it hits Worldwide Web, and we do.

1597
MS. ASSHETON-SMITH: And if I could just add, we need a plant to deliver the data to our customers as well. In fact, on cable we need a line that goes from the head end directly to the home.

1598
MR. GREENHAM: Yeah. It's not just for modem or high-speed Internet. We can put all of our digital services or all of our analogue services across that as well.

1599
MR. RUBY: And other people have other facilities? You mentioned DSL earlier, that goes over telephone wire; is that right?

1600
MS. ASSHETON-SMITH: DSL, I am not an expert on DSL. My understanding is that it does travel over the copper pair.

1601
MR. GREENHAM: It also travels over a fibre optic cable. It needs both.

1602
MR. RUBY: The revenues that are derived from cable company or communications company attachments, how do they get allocated between the shareholders of distributors and the customers of distributors is a matter, I take it we can all agree, that is within the Board's control? This Board's?

1603
MS. ASSHETON-SMITH: Sorry, how the revenues of --

1604
MR. RUBY: I'll do it a different way.

1605
MS. ASSHETON-SMITH: Sorry, I didn't understand the question.

1606
MR. RUBY: Cable companies pay money to distributors in the form of various kinds of charges and fees for attachments; is that right?

1607
MS. ASSHETON-SMITH: Yes.

1608
MR. RUBY: Yeah. And that money can either go to the shareholder of the company or the distributor, or it can get passed on to the customers in the form of lower rates; is that right? Maybe Mr. Glist, I see you nodding, you may be able to help here.

1609
MR. GLIST: Well, it depends on your local regulatory structure and whether you're in a freeze period or all of the above. So I don't know that we know what you do with the revenues, nor can

we tell the Board what to do with those revenues.

1610
MR. RUBY: Okay. But it's up to the Board, though, this Board, or I should say --

1611
MR. GLIST: Unless the decision has already been made in some proceeding or freeze period.

1612
MR. RUBY: Right. But it's not up to the CRTC, for example.

1613
MS. ASSHETON-SMITH: I think we would all agree on that.

1614
MR. RUBY: And it's not a matter for discretion of the distribution company?

1615
MS. ASSHETON-SMITH: I think we can't, we can't really comment any further on this because it's beyond our area of knowledge.

1616
MR. RUBY: Right. Thank you.

1617
Do cable companies know how many attachments they have in Ontario?

1618
MR. GREENHAM: Attachments or pole useage?

1619
MR. RUBY: Attachments?

1620
MR. GREENHAM: No.

1621
MR. RUBY: Mr. Armstrong? Can you --

1622
MR. ARMSTRONG: We know how many hydro poles we get invoiced for.

1623
MS. ASSHETON-SMITH: So we know the number of poles, but my understanding is that we do not know the number of attachments.

1624
And, as John just said, we measured our knowledge of how many poles were on by the number of invoices that we have for those poles.

1625
MR. RUBY: And, Mr. Ford -- you know, let me come back to this.

1626
Mr. Ford, under your model, just so I have this clear, you assume there are two attachments per cable pole; is that right? Per power pole.

1627
MR. FORD: An average of two, yes.

1628
MR. RUBY: And that's the way you allocate -- there's 31 percent you have in your formula for the communications space and you divide that in two, and that's where your 15.5 percent comes from?

1629

MR. FORD: I think it -- that's the number that's arrived at. I'm not sure that's exactly the process. It looks directly at -- the 15.5 percent is not arrived at by 31 percent divided by 2. It's the cable usage that leads -- it's the cable allocation that is calculated directly as the 15.5 percent. But implicit in that is an average of two users on each pole in the communications space.

1630
MR. RUBY: If we assume for the moment that there's only one cable -- only one communications attachment per pole everywhere in Ontario, that would effectively double the price under your model; is that right? Excuse me. It would -- yeah, double the price.

1631
MR. GLIST: Mr. Ford starts with a foot assigned to cable, and then a share of the separation space between secondary and communication, and assigns that to a cable attachment that can be harmonized with the norms of how much communication space there is. You take the EDA model contract that says it's 600 millimetres, so that's the equivalent of saying, Well, if that's the normal, then you're saying two users of the communications space. Just like -- these are averages, just like 40-foot pole is an average based on the weighted data that's been provided to ...

1632
MR. RUBY: All right. I'm just asking, if we change some of the numbers, I'm trying to figure out what the effect is on the model.

1633
MR. FORD: Well, yeah. You are asking me to make an assumption, which --

1634
MR. RUBY: I'm asking you to change the assumption.

1635
MR. FORD: -- which, of course, then, would ignore the existence of the vast majority of joint-use poles for which telephone companies provide one of the two attachments. They are -- they are the base attacher. It is cable that, in most cases, provides the second.

1636
So if there were only one attachment, if the cable were the only attachment, I'm not sure that poles would be designed the same way, and I'm not sure that -- I mean, that would then mean there would be no joint-use agreements. So you're taking me far away from the existing situation, and I'm not sure that it's --

1637
MR. RUBY: Well, let's try the other way, then.

1638
MR. GLIST: Could I just add, too?

1639
MR. RUBY: Sure.

1640
MR. GLIST: Our reality is that the incumbent LEC has a better than 97 percent take rate on the services, and we're at about 65 percent. So the odds are that, when cables attach to a pole, odds are there's going to be an incumbent LEC.

1641
MR. FORD: So the average of two attachments really applies to poles that are used by cable, because the telephone company is essentially already there on most of them.

1642
MR. RUBY: No, I understand that's what you're saying. Let's try it the other way around, though.

1643
If there were three attachments on all poles, what effect would that have on your allocation figure for each attacher?

1644
MR. FORD: If there were an average of three on each pole, then I would -- I would rework the numbers. There would be two other attachers besides the telephone company. Presumably -- it would be hard to assume one foot of communications space for each. And obviously, the separation space would have to be apportioned differently as well. But that's not what I'm proposing.

1645
MR. RUBY: No, I understand that. Let's do it this way:

1646
If you look at page 2 of your report, Mr. Ford, in the last sentence of the second paragraph. Are you with me?

1647
MR. FORD: I am with you.

1648
MR. RUBY: "The most common configuration is three strands occupying the communications space on distribution poles in urban areas, and one or two is the norm in rural areas."

1649
Now, that statement, that's not based on independent third-party research, is it?

1650
MR. FORD: No, it is not.

1651
MR. RUBY: And it's not based on any scientific review of poles in Ontario that you conducted?

1652
MR. FORD: No, it is a comment, and it was not used in my calculations.

1653
MR. RUBY: You say two. That's the number that's used in your calculations?

1654
MR. FORD: For purposes of developing the recommended rate, I used two.

1655
MR. RUBY: Okay. And would you agree with me that if there was data that the Board could depend on that showed that the number of attachments on average, for example, in Ontario was not two, that the Board should be using if it applied your formula, whatever the number the data showed was the proper average.

1656
MR. FORD: I'm not sure that the average calculated in that way would give the number we need. The

issue is the average number of attachments on poles that cable is attached to.

1657

MR. RUBY: Okay.

1658

MR. FORD: Therefore, an average of 1.5 for all poles could mean that 50 percent of the poles have cable attachments and 50 percent of them don't. And we would still be concerned with allocating the costs for a cable attachment only for poles which have cable attachments.

1659

MR. RUBY: All right. Well, thank you.

1660

MR. FORD: And in the example I just gave you, the average number of attachments for poles that have cable attachments is two, even though, if you took a national average -- or a provincial average, again in the example that I gave you, the average would be 1.5 users per pole. We're only concerned about the pole population -- the portion of the joint-use pole population that has cable attachments on it.

1661

[Audio cuts out]

1662

MR. KAISER: Is it back on?

1663

Mr. Ford, can I just follow up on Mr. Ruby's question. You're finished with that line, are you?

1664

MR. RUBY: Yes. Thank you.

1665

MR. KAISER: I thought Mr. Ruby's question was, granted that you're only interested in poles that have cable on it, but we have evidence that there's increasing competition in telecommunications. His question is what happens if the average attachment becomes three? If there are three attachments, what happens to the rate under your proposal.

1666

MR. FORD: If the average became three?

1667

MR. KAISER: Correct.

1668

MR. FORD: Then I indicated there was a little bit of a problem with -- with allocating then a foot of the communications space to three attachers, when -- or three users when there is only 2 feet. But presumably you could allocate two-thirds of a foot of space to each of the three, because there is only two -- 2 feet of communications space, as we've discussed. And then you would divide the separation space by three.

1669

So the amount of pole space used or allocated as usage to each of the three users would therefore be less.
The cost recovery, of course, would be the same. The company -- the utility would be kept whole because all of those costs --

1670

MR. KAISER: Right.

1671

MR. FORD: -- would be recovered.

1672

MR. KAISER: But the rate would go down, would it not?

1673

MR. FORD: The rate would go down, yes.

1674

MR. KAISER: Thank you.

1675

MR. RUBY: And before the sound went off, Mr. Ford -- and is it on again or is mine on, Madam Reporter? I can speak loudly.

1676

Before the sound went off, I'd asked Ms. Assheton-Smith if she wanted to correct the 69/39 information that the CEA had provided about the Ontario -- excuse me, Hydro One and Bell Canada agreement. And I notice at the bottom of page 2 you've produced the same numbers, and I just wanted to make sure that you also accept that the correct figure is 60 percent for the Hydro One and 40 percent for Bell Canada?

1677

MS. ASSHETON-SMITH: I thought that I had already accepted that, but if it wasn't clear, then --

1678

MR. RUBY: No, I understood you had. I just noticed Mr. Ford had it independently in his report so I just want to make sure he's all right with.

1679

MR. FORD: Yes, I am, thank you.

1680

MR. RUBY: If you turn over the page in your report in the next paragraph you refer to Manitoba, and will you agree -- there we go. Now I'm suddenly much too loud. Manitoba Hydro has a joint-use agreement with cable companies.

1681

MR. FORD: I don't know that for a fact, but if you tell me that is a fact, I will have no problem accepting it. It's not something I've looked at recently.

1682

MR. RUBY: And that the party they don't have an agreement with is MTS, the telephone company. Is there anybody on the panel that can speak to that?

1683

MS. ASSHETON-SMITH: No.

1684

MR. RUBY: Well, I take it, and we have a witness coming tomorrow from Manitoba, and perhaps two, I guess, another one from MTS, that if that is the situation, that there are cable agreements but not an MTS agreement, then your first full paragraph on page 3 is incorrect.

1685

MR. FORD: That would be correct, yes.

1686
MR. RUBY: Turning over to the next page, page 4, and this appears as well as an answer that CCTA gave to Energy Probe question number 2. I gather the point that's made here is that cable companies can't get access to rights of way on their own; that they can't build their own poles?

1687
MR. FORD: That's my understanding, that the municipalities have been, well, more than reluctant, they have basically refused to grant permits when permits have been applied for to construct pole lines in municipalities.

1688
MR. RUBY: And Mr. Glist, I think, said this earlier as well. Is that right? Cable companies cannot build their own poles.

1689
MR. GLIST: That's correct, as a practical matter. That's right.

1690
MR. GREENHAM: Just for clarity, on the 407 build, it wasn't the municipality that granted us the permission to do that it was the Ministry of Transportation.

1691
MR. RUBY: So it's the public authority or municipality that's the problem, it's the right of way? I take it you could go out and hire a construction company, that's not the problem; is that right?

1692
MR. GLIST: But the municipality, which is often the stakeholder in the LDC, is saying, No, don't build.

1693
MR. RUBY: Right. Well, Mr. Ford, Mr. Glist, have you reviewed the Federal Telecommunications Act in Canada, in preparation for your testimony?

1694
MR. GLIST: Yes, and I understand that the right is there on the books to do it, as it is in the United States, but that doesn't get you the municipal permit to do it.

1695
MR. RUBY: Okay. I don't want to put this to you without giving you the document. I have a copy of what I'm going to suggest are the relevant sections to have Telecommunications Act for simplicity, and with the Board's permission, I'd like to provide them to whichever witnesses think it's appropriate to answer this question.

1696
MS. ASSHETON-SMITH: I'll deal with telecommunications questions.

1697
MR. RUBY: And perhaps, Mr. Lyle, can -- and a copy for the Board.

1698
MR. LYLE: Mr. Chair, we'll mark that as Exhibit 1.2. E.1.2.

1699
EXHIBIT NO. E.1.2 EXCERPTS FROM THE FEDERAL TELECOMMUNICATIONS ACT

1700
MR. RUBY: Now, Ms. Assheton-Smith, I take it you'll agree that these are sections 42

and 43 of the
Federal Telecommunications Act?

1701
MS. ASSHETON-SMITH: Yes.

1702
MR. RUBY: And Mr. Glist, and Mr. Ford, if you would go down to 43(4). This is what I think is the
key provision: "Where a Canadian carrier or distribution undertaking," and I'll stop there.
In this context, Ms. Assheton-Smith, I take it distribution undertaking includes cable
companies?

1703
MS. ASSHETON-SMITH: Includes cable companies, that's correct.

1704
MR. RUBY: All right: "... cannot, on terms acceptable to it, obtain the consent of the municipality or
other public authority to construct a transmission line," and I take it transmission line,
you would say, includes facilities; is that right?

1705
MS. ASSHETON-SMITH: Yes. That's correct.

1706
MR. RUBY: "... the carrier or distribution undertaking may apply to the commission," and
Commission's the CRTC.

1707
MS. ASSHETON-SMITH: That's correct.

1708
MR. RUBY: "... for permission to construct it, and the commission may, having due regard to the use
and enjoyment of the highway or other public place by others," madam reporter I'll give
you a copy of this, "grant the permission, subject to any conditions that the commission
determines."

1709
Now, have any carriers or distribution undertakings in Canada sought the permission of the CRTC under
this provision?

1710
MS. ASSHETON-SMITH: We have sought the permission of the CRTC to construct buried fiber in
new development under this provision, yes.

1711
MR. RUBY: Okay. And isn't it right that there was a situation that arose in Vancouver where a
company constructed telecommunications lines and the municipality, I think, threaten to
cut the wire because permission hadn't been granted?

1712
MS. ASSHETON-SMITH: That was not a cable company, but, yes, that's correct.

1713
MR. RUBY: And in that situation, if I'm not wrong, the CRTC ultimately granted the permission on
certain terms; is that right?

1714
MS. ASSHETON-SMITH: Yes, it did.

1715
MR. RUBY: And the municipality's appealed to the Federal Court of Appeal.

1716
MS. ASSHETON-SMITH: Yes, they did.

1717
MR. RUBY: And they lost.

1718
MS. ASSHETON-SMITH: Yes, they did.

1719
MR. RUBY: Then they sought leave to appeal to the Supreme Court of Canada.

1720
MS. ASSHETON-SMITH: Yes, they did.

1721
MR. RUBY: And lost there?

1722
MS. ASSHETON-SMITH: Yes.

1723
MR. RUBY: All right.

1724
MS. ASSHETON-SMITH: I should point out, though, that notwithstanding that, Ledcor, which we've referred to as the Ledcor decision, L-e-d-c-o-r for the reporter, it was a significant CRTC decision that ensured that telecommunication carriers, as well as cable companies could get access to rights of way if they needed to construct transmission facilities.

1725
I should point out, though, that the decision applied only in Vancouver, as the commission stated in its decision. It was not a general model agreement for all municipalities to sign. In fact, since that time, a number of disputes continue to appear and subsequent applications have been filed with the CRTC because access to those rights of way remain an issue. The commission has never, to my knowledge, set terms and conditions for the construction of cable poles under this section.

1726
MR. RUBY: Has any --

1727
MS. ASSHETON-SMITH: And I should point out too that one of the reasons for that has been that it is typically for environmental, aesthetic, and in some cases specific public policy reasons, the policy either of the municipality or of the province, not to permit duplicate support structures to be built. And it's obvious that we don't want telephone companies and hydro companies and cable companies each to put up a separate set of poles in any particular municipality. So the fact that no cable company has sought permission under section 43(4), I should caution, should not be read in any way to suggest that the theoretical possibility to build is there.

1728
MR. GREENHAM: I'd like to also point out that the Ledcor cable that was placed and approved by the CRTC was 100 per cent buried along a railway right of way. The only location where it needed approval from the CRTC was the road crossings as it travelled along the railway.

1729
MS. ASSHETON-SMITH: If I could just add one other thing too. Your question seems to be implying that if we need to expand our services, we could always ask the CRTC for permission to build under this section if a municipality failed to consent. What that would not address, though, are the 300-plus poles on which we already have attachments in Ontario, and -- poles on which we already have attachments. And in that case, to completely build a brand new infrastructure network would be simply unfeasible.

1730
MR. RUBY: Okay. Well, I, of course, never meant to imply anything. I just ask questions.

1731
MR. KAISER: Mr. Ruby, are you finished with this line of questions?

1732
MR. RUBY: I have, if I may, two more questions on this point, and I'm happy if the Board wants to break for the day at that point.

1733
I take it that there are either Canadian carriers -- cable companies that have applied to the CRTC after the Ledcor decision for access?

1734
MS. ASSHETON-SMITH: I'm aware of at least one.

1735
MR. RUBY: And one, at least, involves MTS Allstream; isn't that right?

1736
MS. ASSHETON-SMITH: Yes, I'm aware of that application.

1737
MR. RUBY: Okay. So maybe we'll wait to deal with that one when they get here.

1738
Thank you, Mr. Chair. Those are my questions for today.

1739
PROCEDURAL MATTERS:

1740
MR. KAISER: Thank you, Mr. Ruby.

1741
Mr. Lyle, you raised earlier the question of November 10th.

1742
MR. LYLE: Yes, Mr. Chair.

1743
MR. KAISER: We have a Board meeting in the morning of that day, so if we were to sit that day, we would have to start at 12.

1744
MR. LYLE: That was my understanding, Mr. Chair, yes.

1745
MR. KAISER: And tomorrow we're scheduled to start at 12; is that correct?

1746
MR. LYLE: I believe it's 11 -- sorry, no, 12 tomorrow, that's correct.

1747

Mr. Chair, does the Board intend, then, to have Ms. Friedman's witnesses attend for cross-examination on
the 10th, or are you reserving on that?

1748
MR. KAISER: Well, if the half day's sufficient, then we'll proceed on that basis.

1749
MR. LYLE: There's also the question of MTS Allstream's witness.

1750
MR. KAISER: Yes. Do you think we'll be able to get them all in in the half day?

1751
MR. LYLE: Well, that witness is also available on the 8th. I don't think it will take terribly long, but
they could make themselves available on the 8th.

1752
MR. KAISER: Maybe we'll do both, and out of an abundance of caution, we could hear the Allstream
witness on the 18th.

1753
MR. LYLE: Okay.

1754
MR. KAISER: And then we could hear Ms. Friedman's witnesses on the 10th.

1755
MR. LYLE: Certainly, Mr. Chair.

1756
MR. KAISER: All right. We'll stand adjourned.

1757
MR. LYLE: Thank you.

1758
--- Whereupon the hearing adjourned at 5:11 p.m.

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ONTARIO ENERGY BOARD

Volume: 2

27 OCTOBER 2004

BEFORE:

G. KAISER
PRESIDING MEMBER AND VICE CHAIR

P. SOMMERVILLE
MEMBER

C. CHAPLIN
MEMBER

1

RP-2003-0249

2

IN THE MATTER OF a hearing held on Wednesday, 27 October 2004, in Toronto, Ontario; IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B); AND IN THE MATTER OF an Application pursuant to section 74 of the Ontario Energy Board Act, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licences of electricity distributors.

3

RP-2003-0249

4

27 OCTOBER 2004

5

HEARING HELD AT TORONTO, ONTARIO

6

APPEARANCES

7

MIKE LYLE
Board Counsel

TOM BRETT
Canadian Cable Television Association

KEN ENGELHART
Canadian Cable Television Association

PETER RUBY
Canadian Electricity Association

KELLY FRIEDMAN
The Electricity Distributors Association

BRIAN DINGWALL
Energy Probe

JENNY CROWE
MTS Allstream Inc.

LJUBA DJURDJEVIC
Toronto Hydro

ANDREW LOKAN
Power Workers' Union

CAROLINE DIGNARD
Cogeco

ADELE PANTUSA
Hydro One

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14

--- Upon commencing at 12:10 p.m.

15

MR. KAISER: Please be seated. Mr. Ruby, before we proceed, can you tell us how much longer you might be with this panel?

16

MR. RUBY: Less than an hour.

17

MR. KAISER: And then do you have another witness after that?

18

MR. RUBY: We have the witness for the CCTA. There's just one.

19

MR. KAISER: That's Mr. Wiebe?

20

MR. RUBY: Excuse me, CEA.

21

MR. KAISER: CEA, right.

22

MR. RUBY: I'm not getting off to a good start.

23

MR. KAISER: You have a lot of us confused. All right. Please proceed.

24

MR. RUBY: Thank you.

25
CCTA PANEL 1 - FORD, KRAVTIN, GLIST, ASSHETON-SMITH, O'BRIEN, ARMSTRONG, GREENHAM:

26
D.FORD; Previously sworn.

27
P.KRAVTIN; Previously sworn.

28
P.GLIST; Previously sworn.

29
L.ASSHETON-SMITH; Previously sworn.

30
R.O'BRIEN; Previously sworn.

31
J.ARMSTRONG; Previously sworn.

32
S.GREENHAM; Previously sworn.

33
CROSS-EXAMINATION BY MR. RUBY:

34
MR. RUBY: Mr. Ford, when we broke yesterday we were going through your report, and if I could I'd like to pick up where we left off.

35
MR. FORD: Yes, sir.

36
MR. RUBY: And I think that we'd gotten to the various references, the companies across Canada that are in your report. And in your report, at various points, you refer to the situation in Nova Scotia.

37
MR. FORD: That is correct.

38
MR. RUBY: And, in fact, as I understand it, you were a witness in that proceeding, in the proceeding involving -- the most recent proceeding involving joint-use rates for power pole access in Nova Scotia.

39
MR. FORD: That's right.

40
MR. RUBY: Now, isn't it the case that Nova Scotia Power applied for a tariff for its joint-use poles?

41
MR. FORD: I'm not sure if you're making a distinction. They made an application to the Board for a rate --

42
MR. RUBY: Right.

43
MR. FORD: -- for approval and asking the Board to approve a rate. I'm not sure if it was in the form of a tariff, if you're making a distinction there.

44
MR. RUBY: Fair enough. But it wasn't the cable companies that were seeking the rate from the Board, they didn't apply for it.

45
MR. FORD: That is correct.

46
MR. RUBY: And as I understand it, and you can correct me if I am wrong, that's the way it's been done historically in Nova Scotia. This wasn't the first time.

47
MR. FORD: I'm afraid I cannot comment on that. I have only been involved in the one proceeding in Nova Scotia.

48
MR. RUBY: Again, it's my understanding, and you can confirm it if it's within your knowledge, that this wasn't a case of failed negotiations with the cable companies that led to a proceeding, this was an application by the power company.

49
MR. FORD: I think it's fair to say that the power company wasn't satisfied with the rate that the Board had previously approved, which was the same rate that, essentially, the Board had, to my understanding, adopted, the $9.60 rate; and that the incentive in going to the Board, because the rates had been regulated for some time, was to achieve a higher rate.

50
MR. RUBY: Maybe we can turn to Alberta, which is another proceeding, joint-use proceeding, that's referred to in your materials; is that right?

51
MR. FORD: That is correct.

52
MR. RUBY: And in that case it was TransAlta, the electricity distributor, or one of the electricity distributors in Alberta, that sought a rate from the Board; isn't that right?

53
MR. FORD: I was not involved in the TransAlta case before the EUB at all. I have relied for my evidence, and you may notice a reference or two in there, according to the decision, because all I have read of the TransAlta case is the decision. And the summary that I have presented to assist the Board and other parties in understanding the various approaches that have been used across Canada and, indeed, before the FCC, is to provide the best summary that I could do, and that was based on the decision.

54
MR. RUBY: Can you turn to page 15 of your report, please.

55
MR. FORD: I have that.

56
MR. RUBY: This is under the section -- if you turn back to the page, EUB, and that

deals with the
TransAlta case; is that right?

57
MR. FORD: That is correct.

58
MR. RUBY: And you say at the top of the page:

59
"During the four years the EUB's decision on support structure rental charges was pending, TransAlta
and the cable companies agreed on a lower rate. TransAlta's local distribution business was also sold to
UtiliCorp. During this period, UtiliCorp has continued to honour the negotiated rental charge and forego
the additional revenue it could receive by charging the EUB-approved rental charge."

60
I take it that did not come out of the decision.

61
MR. FORD: No, but I must admit I have not looked at the agreement which contained the negotiated
rate, and I do not know whether, in fact, TransAlta or the successor owner of the poles
had the right to change the rate. I do not know that.

62
MR. RUBY: But it's your evidence that the rate for TransAlta's poles, and its successor company, is
now the rate that the parties agreed upon as opposed to the rate the Board imposed?

63
MR. FORD: At the time I wrote the evidence. I don't know what the situation is today, but as I say, I
don't know whether they continued to use the negotiated rate because the agreement
required that or whether they elected to do that even though the higher rate could have
been imposed. I just do not know the answer to that question.

64
MR. RUBY: Right. But at the time you wrote this report, it was the negotiated rate that was being
used?

65
MR. FORD: It was in effect, but as I say, I did not know then, and I do not know today, whether or not
the agreement was binding in terms of the price or whether it could have been revised by
the successor/owner of the poles to implement the higher rate.

66
MR. RUBY: Could you turn back to page 4, please. In the third paragraph, the last sentence, you say:

67
"In many recent cases, such as the one which is the subject of the CCTA's application, negotiations have
proven unsuccessful."

68
Hopefully, you can help us understand this a bit more. When you say, "in many recent cases such as this
one," does that mean there are more cases of unsuccessful negotiations than the ones in Ontario?

69
MR. FORD: I was referring primarily to the situation in Ontario, which collectively are the subject of

the CCTA's application.

70
MR. RUBY: Okay. So when you say "the many recent cases," those are all the recent cases in Ontario you're referring to.

71
MR. FORD: Primarily. Primarily in Ontario, it is my understanding, yes.

72
MR. RUBY: How many are there outside Ontario? You said primarily, so --

73
MR. FORD: I'm not sure that I could point you to a specific example, and as I say, my evidence was directed primarily to Ontario.

74
MS. ASSHETON-SMITH: Perhaps John Armstrong can help you on this question. He has some experience in other jurisdictions.

75
MR. RUBY: Well, I'm interested in what Mr. Ford said in his report.

76
MS. ASSHETON-SMITH: We could provide the facts for you on that answer, if you would like.

77
MR. RUBY: Sure.

78
MR. FORD: I understand, for example, that there is an attempt to negotiate a rate in New Brunswick, for example, which is -- that's a little -- that is an update. That is an ongoing process, for example, and to my knowledge, that has not been successful. So that would cover all of the power poles in New Brunswick.

79
MR. RUBY: Okay.

80
MR. FORD: That would be one example.

81
MR. RUBY: Okay. Mr. Armstrong, do you want to add anything?

82
MR. ARMSTRONG: No. That was the example I was going to put forward.

83
MR. RUBY: Okay. Mr. Ford, you took Ms. Friedman yesterday back to the settlement agreement in this matter on the question of pricing above incremental but below stand-alone costs, that we're all agreed you have to be in between those two, the price has to be between those two boundaries; is that right?

84
MR. FORD: If I refer back, the settlement agreement speaks for itself, but I believe that that's a reasonable -- a reasonable summary of words under -- I believe it is under 3(a).

85
MR. RUBY: Okay. Well, my question is, is it your position that any -- or I gather it's not your position

that any distributor is charging more than their stand-alone costs.

86
MR. FORD: I don't believe there are any such cases, none that I am aware of.

87
MR. RUBY: Now, if you can turn to page 21, Mr. Ford, of your report. This is -- I'm looking at the third paragraph on the page, and it's under the heading which is on the previous page, "Determining the Appropriate Level of Contribution." You have what strikes me as a bit of a summary of the principles supporting the methodology you've proposed.

88
And I don't want to put words in your mouth, but to summarize that paragraph, it strikes me that the three principles underlying your approach are competitive equity, appropriate incentives, and the fact that power utilities have the benefits of ownership; is that fair?

89
MR. FORD: Well, I think, I think that is a summary at the end. We are, of course, starting off with a set of cost-based rates. I mean, the --

90
MR. RUBY: Yes.

91
MR. FORD: -- the primary principle is that they be cost-based.

92
MR. RUBY: Fair enough.

93
MR. FORD: And in terms of -- and in terms of then deciding the appropriate level, some of the principles that should be used are fairness, competitive equity, and the public interest.

94
MR. RUBY: You say "some." Is there somewhere else in your report I should be looking for the principles?

95
MR. FORD: No, sir, that's -- I think that's what that -- that is what that sentence says, and it is what I said.

96
MR. RUBY: Okay.

97
MR. FORD: Once you have looked at the embedded costs and determined the costs related to the common spaces, then that is an appropriate way to judge the -- to judge the appropriateness of the level of contribution.

98
MR. RUBY: Okay. Can I ask you the turn back a page, to page 20, the very last paragraph, please. In the very first sentence you say:

99
"The use of fully-distributed costing to set prices for non-core services of a utility is not appropriate because such costs are presumably already being recovered in full through the prices charged by the utility for its core services."

100
So, I take it from the use of your word "presumably," that this is an assumption you're making, on your part?

101
MR. FORD: It's an assumption which, I think, is based on my understanding of the methodology of rate of return regulation, which is applied to the utilities.

102
MR. RUBY: Okay. And that is one of the assumptions that underlies your methodology?

103
MR. FORD: I guess it goes to my judgment as to whether or not it is fair.

104
MR. RUBY: All right.

105
MR. FORD: It is looking at a contribution for which the utility really has no costs. It's coming back to the issue of the costs that would be incurred but for the attachment, the use of the space by the cable company. And my assumption is that most of those costs are recovered in that -- in that way.

106
MR. RUBY: And, if you stick with me for a moment, if we change the assumption, so let's assume for the moment together that the Board sets in place pricing so that, through distribution rates, the full cost of the pole is not being collected. Would that change your expert opinion?

107
MR. FORD: No, it wouldn't change my expert opinion, because I do not believe that, if the Board chose not to permit the utilities to recover their costs, that it would -- would affect what I would view as an appropriate method of costing for cable use of the communications space on a pole.

108
MR. RUBY: Okay. One of the other items we mentioned before - and I think you agreed with me - was one of the principles -- is the principle that utilities are owners of these poles, and cable companies are tenants. Is that right?

109
MR. FORD: That is correct.

110
MR. RUBY: And that was a principle that underlay the CRTC decision, as well, that you've referred to in your report?

111
MR. FORD: It's certainly my understanding that that was one of the things they took into account in deciding the fairness, appropriateness, and reasonableness of the decision.

112
MR. RUBY: Will you agree with me that that's a factual issue, that is, it's an issue of evidence whether or not there actually is a benefit of ownership to utilities?

113

MR. FORD: Perhaps you could help me with the distinction you're asking me to make. If it's not factual or a matter of evidence, what would it be?

114
MR. RUBY: Well, I'm suggesting that it is a matter of evidence. It's not a matter of surmise or of opinion or of calculation.

115
MS. ASSHETON-SMITH: Mr. Ruby, I think you're asking Mr. Ford to make a legal determination as to the nature of what is required to prove a fact.

116
MR. RUBY: No, I'm just trying to separate his opinion from the facts that underlie his opinion.

117
Let me ask this a different way. Your opinion that you've provided in your report, overall, has -- I take it you'll agree with me it's got two components. It's got some underlying facts and assumptions, and it's got the methodology you've built based on those facts and assumptions; is that right?

118
MR. FORD: Some of the facts and assumptions are used to develop the methodology; others are used in evaluating the appropriateness.

119
MR. RUBY: Okay. "Ownership versus Tenancy," I think that's one of the titles in your report.

120
MR. FORD: Correct.

121
MR. RUBY: Is that one of the facts or assumptions?

122
MR. FORD: It is a -- it is a consideration that was taken into account by the CRTC in making its decisions as to the appropriateness of a methodology.

123
MR. RUBY: Let me ask you this way. If it was the case that this Board found that, as a matter of fact, there was no benefit to ownership and no net disadvantage of tenancy, would that affect your conclusions in your report?

124
MR. FORD: That's a very difficult question to answer, and I'm not sure that it is a question that I can answer. I wouldn't purport to know how the Board would make its decision.

125
MR. RUBY: No, I'm not asking you that. I'm asking you to assume, as the Board is being asked to address that question, but I'm asking to you assume, for the purpose of this question, that it finds that, as a matter of fact, there is no benefit of ownership and no disadvantage of tenancy. All I want to know, I'm not asking how much, I just want to know if it changes anything.

126
MR. FORD: You're asking me if the Board believed that, would they view my evidence differently?

And it's a question that I cannot answer.

127
MR. RUBY: No, I'm asking you if your opinion would be different.

128
MR. FORD: It is such a hypothetical question that I'm really having difficulty trying to answer it. I really don't know what the answer is. I don't know how the Board would act.

129
MR. RUBY: All right. We'll go on to a bit of a different issue.

130
One of the issues on the issues list is how charges should be applied, and one of the things people have talked about is per user or per attachment, for example.

131
MR. FORD: Correct.

132
MR. RUBY: Which one does your model yield? Or is it something else? I don't want to put words in your mouth.

133
MR. FORD: No, it is -- it yields a rate per user within the communications space. Obviously, it relates only to communications space. I think that almost goes without saying. But, yes, it is per user.

134
MR. RUBY: So I understand this, if one user has two attachments, they pay one charge under your model?

135
MR. FORD: In the very few circumstances where a cable company -- we're only dealing with a cable company user here. In the few circumstances where a cable company user has two attachments, one of which might be a conventional cable, one of which might be an attachment for a subscribe drop, for example, which would be -- doesn't require a full cable attachment, that's one example, there would be one fee payable, yes.

136
MR. RUBY: Mr. Greenham, do you know what overlashing is?

137
MR. GREENHAM: Yes, I do.

138
MR. RUBY: Can you explain it to the Board, please.

139
MR. GREENHAM: Sure. Overlashing is, through an agreement, a support-structure agreement either with Bell Canada or with some of the LDCs, the third party is allowed by the existing facility to overlash to their existing strand. We have an agreement with Bell Canada where we take advantage of that so that it reduces the amount of attachments to the pole specifically, because there's only their strand, their bolt, and then we overlash to their cables that are also on that.

140
The LDCs have also taken advantage of that in several municipalities to overlash to our facilities so that they don't have to incur the make-ready charges or build their own facilities as well.

141
MR. RUBY: So is the idea sort of a bundle of cables together? Physically, I'm talking about.

142
MR. GREENHAM: Physically, it's a bundle of cables that are tied together by the lashing wires.

143
MR. RUBY: And do communications users ever lash together two or more of their own wires?

144
MR. GREENHAM: Our architecture calls for that.

145
MR. RUBY: Okay.

146
MR. GREENHAM: And I'm assuming that Bell Canada does in a lot of cases as well, because they have a copper cable and a fiber cable in a lot of cases.

147
MR. RUBY: So one user can have two wires on a pole if they're overlashed together?

148
MR. GREENHAM: Technically, the word "overlash" is an additional cable that's placed after the original cable. In some cases we can lash three cables all at the same time, so there's no, really, technical overlashing going on.

149
MR. RUBY: I see. But you can have two or more cables owned by the same user, the same company, bundled together?

150
MR. GREENHAM: Yes.

151
MR. RUBY: Okay. Staying with you for a minute, Mr. Greenham, just to get some of the technical elements aside so we can discuss this more fully, yesterday we talked about how fibers can have multiple glass strands in them; is that right? This is fiber optic cable I'm talking about.

152
MR. GREENHAM: Yes, that's typically how fiber optic cables are manufactured.

153
MR. RUBY: And is it fair to say that sometimes one company or user will own some of the strands in that cable, and sometimes another company will own other strands in the cable?

154
MR. GREENHAM: Through a swap arrangement, that is possible.

155
MR. RUBY: I've also heard it called a condominium. Have you heard that term before?

156
MR. GREENHAM: No, not specifically on that.

157
MR. RUBY: Okay. Mr. Ford, in the two cases we just discussed, starting with lashing or bundling, under your model, does the user get charged once or twice if it's bundled two of its

cables together on a pole?

158
MR. FORD: I guess there are a couple of examples -- a couple of possibilities, and let me give you my understanding of how it works. But I certainly would appreciate if our cable industry representatives could correct me if I am wrong. But my understanding is that it is the application for a permit to attach to a pole that generates, eventually, a charge. Any time a cable is placed that is overlashed to an existing, say, approval that's granted to a Bell facility, a permit would be applied for, issued, and that would result in a billing to the cable company for that attachment, even though it is physically attached to probably -- presumably a telephone company's strand.

159
MR. RUBY: That's just a matter of contract, right, or practice?

160
MR. RUBY: I'm just trying to get at your model to start with. We can deal with the practice issues.

161
MR. FORD: So that would essentially, as I said, result in a charge and would therefore be classified as a user. I believe that when one strand is attached which contains two of a cable companies facilities, if there are two cables, that would result in one charge as a single user.

162
Now, I would look to my cable industry colleagues to see if they agree with my understanding, because I will be honest with you, I have never applied for a permit.

163
MR. GREENHAM: The overlash scenarios vary across the province. Some LDCs charge us a full rental for that overlash, others don't charge for it at all, others charge 10 or 25 percent of the pole attachment fee. In Mr. Ford's model, that additional payment would reimburse the utility more if there was two users on that pole, plus an overlash, they would be receiving additional revenues that would be up above the cost of placing that 2 feet.

164
MR. RUBY: Is that right, Mr. Ford? Is that the way your model works?

165
MR. FORD: My model is based on an assumption of two users of the communications space.

166
MR. RUBY: It's a system-wide --

167
MR. FORD: It's a rate that -- that's right. And I'm glad you mentioned that. Because I was a little afraid that the record yesterday was confused. We are dealing system-wide -- we're dealing with system-wide average poles and system-wide average attachments, and that is to poles to which cable is attached. But once the rate is struck, then if it is applied to three users on a pole, then, if there are -- then if -- well, if there are three users, if there are two cable users, two different cable systems, for example, then there would be the

recovery of two such charges.

168
MR. RUBY: Okay. Let's go back to my original question. Under your model, you told me that your model yields price per pole, excuse me, per user, per pole, I take it?

169
MR. FORD: That is correct.

170
MR. RUBY: But if there is a cable company that's overlashed two wires, it pays once because that's just one user? Is that right?

171
MR. FORD: Unless a separate permit were required, and I think we heard Mr. Greenham say that in some cases that requires a full separate charge under existing contracts and agreements, in some cases it is at a lower rate of 25 percent.

172
MR. GREENHAM: In some cases zero. They don't actually count that as two attachments or two permits.

173
MR. GLIST: I would add that overlashing is generally regarded as a useful technology for minimizing burdens on the poles and advancing the deployment of advanced technology, it is so regarded by the FCC. And so it's also treated as not causing costs.

174
MR. RUBY: All right.

175
MR. GREENHAM: It also helps reduce clutter and aerial pollution. Aerial pollution is when municipalities get upset because there's so many wires on the pole. And if you can combine the locations onto one strand, it doesn't look as cumbersome to the homeowner, where all these cables are going in front of their house. So it's not just because we're, you know, trying to reduce the amount of costs and stuff, we're also trying to keep the municipality and the homeowner happy with the look of the pollution of the poles.

176
MR. RUBY: And Mr. Greenham, do electricity distributors in Ontario discourage overlashing? They let you do it; right?

177
MR. GREENHAM: They do it themselves.

178
MR. RUBY: Right. And Mr. Armstrong, for Rogers? Electricity distributors don't discourage you from overlashing?

179
MR. ARMSTRONG: I agree with Mr. Greenham. The distributors overlash themselves.

180
MR. RUBY: That unfortunately doesn't answer my question. That might be the case but -- I take it they don't discourage you from doing it? You're not prohibited from doing it?

181
MR. ARMSTRONG: No, that's correct. And most -- depending on the technical

specifications, which,
again, I can't speak to, if you meet the technical requirements of the LDC for an
overlash, you generally can overlash.

182
MR. RUBY: Mr. Ford, in your model, does it matter how much space -- I'll be very specific here --
exclusive space a cable company uses on a pole? That is, space that nobody else uses or
can use because it's there?

183
MR. FORD: The assumption is made that there are two users of the communications space, and it
assumes that each user uses 1 foot, even though, as we discussed yesterday, it may only
be a three-inch bracket and a bolt through the pole to support it. So I would think it is
almost more by convention, and I think I used that term yesterday, by convention that it
is assumed to be 1 foot. The spacing, of course, of the attachments of those brackets is
normally 1 foot. And I think that is probably the source of the 1-foot convention, and
that's what I have used.

184
MR. RUBY: All right. Ms. Kravtin.

185
MS. KRAVTIN: Yes.

186
MR. RUBY: Yesterday, I believe you told Ms. Friedman that, in preparing your report with Mr. Glist,
you looked at the way various regulators dealt with power pole cost allocation; is that
right?

187
MS. KRAVTIN: I'm not sure I used those words. Certainly, both Mr. Glist and I have been
involved in pole regulation and pole cases for many years. So we are relying on
our expert knowledge in preparing this report.

188
MR. RUBY: Okay. In preparing this report, I take it you also reviewed the serious economic literature
that exists with respect to cost allocation; is that right?

189
MS. KRAVTIN: No, I do not believe I testified to that. I've been involved in this field for, you
know, at least 25 years, so certainly I relied on my expert knowledge and
experience in the area of pole regulation, as well as my economics background,
which included, certainly, you know, work in the area of what you're referring to,
I believe, as serious economic literature, in terms of a theoretical literature, for
which I studied.

190
MR. RUBY: Okay. And the serious economic literature that we're referring to, that --

191
MS. KRAVTIN: Do you want to define for me, though, what you're referring to as "serious?" It's
an interesting word, adjective --

192

MR. RUBY: Well, let's call it as we often --

193
MS. KRAVTIN: -- I may need to object to it, as someone who's worked in the applied field.

194
MR. RUBY: Sure. Let's start with the standard texts and refereed economic journals. You agree that those are -- first of all, you agree that there are standard texts in economics?

195
MS. KRAVTIN: Certainly. And those would have been works that I would have studied in the course of my educational experience and professional experience, over the years.

196
MR. RUBY: Right. And there are refereed journals as well.

197
MS. KRAVTIN: Certainly refereed journals exist.

198
MR. RUBY: Okay. And I take it you would agree that that, to keep it simple, body of economic literature provides that principles of economic efficiency, fairness and incentives should be considered with respect to cost allocation?

199
MS. KRAVTIN: Are you referring to a specific piece of work? I mean, certainly, those are criteria that are referred to in the literature, as well as -- as the regulatory body of work as well, concepts of efficiency and equity.

200
MR. RUBY: All right. As an economist, I take it you'll agree that any methodology for joint-use cost allocation must be congruent with generally-accepted economic principles.

201
MS. KRAVTIN: Well, certainly as an economist, I believe economic principles are important and should be considered by a regulated body, and certainly I believe our report discusses those principles and its application to this issue.

202
MR. RUBY: More than just address, doesn't it? It should be consistent with those economic principles, shouldn't it?

203
MS. KRAVTIN: Yes, certainly, and our report goes to that point.

204
MR. RUBY: Right. And is another one of those generally-accepted economic principles with respect to cost allocation that common costs should be allocated or should be - well, allocated's a good word - as nearly equal as possible?

205
MS. KRAVTIN: No. I would not agree with that in all cases. I think the generally-accepted principle is that costs be allocated on a cost-causative basis. And, clearly, there are different approaches that can be applied, but the overarching goal is with the principle of cost causation. And sometimes, in practice, you do the best you

can
to match the reality with those principles. I don't think that it's necessarily equal.
It will certainly depend on the circumstances involved.

206
In the regulatory field, and in the legislative world, too, we deal with concepts such as competitive
neutrality and level playing field, and those sorts of concepts.

207
MR. RUBY: Mr. O'Brien, will you agree with me that not all electricity ratepayers are cable
customers?

208
MR. O'BRIEN: That's correct.

209
MS. KRAVTIN: Yes. I'd actually like to add one point further.

210
In discussing the regulatory field and the legislative history, and where this industry has been at, it's
generally in the concept of a monopolist and with the entry of competition. And so the real world has had
to deal with those issues of how to take the theory and adapt it to a situation, or apply those aspects of the
theory that deal with the transition of monopoly to competition, or the existence of monopolists who
control essential facilities that are needed for use in other industries.

211
So, again, not knowing, you know, exactly what book or text you're looking at, it's unclear for me to
know if it's dealing with the situation of a monopoly environment.

212
MR. RUBY: I'm --

213
MS. KRAVTIN: Or the use of essential facilities. So we're talking in the abstract. I'm trying to
bring it back to this industry, this situation. And I just want to make clear so that
the record's clear.

214
MR. RUBY: Well, Ms. Kravtin, I don't want to be unfair to you. I'm just reading from the handbook of
game theory that was referred to yesterday.

215
MS. KRAVTIN: But are the -- the article or treatise you're referring to, is it dealing with the
situation of monopolist controlling essential facilities?

216
MR. RUBY: I'll tell you what, I have a copy. I'll give you one. I suppose Mr. Lyle can mark this as an
exhibit.

217
MR. KAISER: And Mr. Ruby, what is it you're asking this witness to do with this --

218
MR. RUBY: The witness seemed to be concerned that I was looking, excuse me --

219
MR. KAISER: And Mr. Ruby, what is it you're asking the witness to do with

this book that you want to
give her?

220

MR. RUBY: Absolutely nothing. She, in my view, asked me what I was reading from, and I don't want to be unfair, and not have her at least have a copy.

221

MR. BRETT: Are you seeking to put this in the record in some way, or are you just giving to her to take home and read?

222

MR. RUBY: Well, I think it should be part of the record. I mean, clearly there's an issue if I'm looking at something that she doesn't have.

223

And I'm quite happy to ask Dr. Mitchell, who's also an economist, to testify about whether this particular book is a standard text in economics.

224

MR. KAISER: To come to Mr. Brett's point, are you suggesting that, if we accept this as an exhibit, that it represents evidence in some sense?

225

MR. RUBY: Well, it would be an authority, certainly, the same way other standard scientific texts often are.

226

MR. KAISER: But you are going to put a question to the witness with respect to some specific passage in this, or not?

227

MR. RUBY: I'm quite happy to do that if that's --

228

MR. KAISER: I don't want you just throwing a book in the record that you got from the Robarts Library yesterday afternoon. I mean, you need to put something to the witness.

229

MR. BRETT: That's my concern, Mr. Chairman. And there's also a sort of informal rule, at least here, that if you're going to put something to the witness and ask them a question about it, whether it's a two-page piece of paper, let alone a book, you should give 24 hours' notice. We should have had this piece of material earlier. So it seems to me what he's really talking about is using it as a tool of cross-examination or, perhaps, a tool of examining his own witness in chief. And I'm more comfortable with that, frankly, than --

230

MR. RUBY: Well, I can do it the other way. I did not intend to put this to the witness. I didn't quote to her provisions. I asked her about general economic principles. If she doesn't want to see it, then I'm quite happy not to give it to her.

231

MR. KAISER: All right. Let's leave it on that basis. You can put it to your witness in direct.

232

MR. RUBY: Thank you.

233
MR. BRETT: It's an exhibit, though, it's not evidence, I take it?

234
MR. RUBY: Well, it's not anything at the moment.

235
MR. KAISER: It's not anything at the moment.

236
MR. RUBY: Ms. Kravtin, at page 7 of your report, at line 6, are you with me?

237
MS. KRAVTIN: Yes.

238
MR. RUBY: "This economic reality is the reason why pole attachments have generated a rich and ample history of monopoly abuse."

239
Just focussing for the moment on the phrase, "rich and ample history of monopoly abuse," and Mr. Glist, you should feel free to chime in on this one since this is your evidence too, does that refer to the situation in the United States?

240
MR. GLIST: The evidence goes back to the original Bell system, which covered Canada as well. Citations are provided in there, and I'm sure you've gone to them and reviewed the history. There was an effort by the monopoly owners of pole facilities to leverage their control into displacing the development of an independent facilities based cable television industry. That led to the kind of regulatory regimes that provide rights of access to poles and fair and reasonable rates.

241
MR. RUBY: Okay, Mr. Glist, I take it then from your answer that when we want to find out what "rich and ample history of monopoly abuse," it's the matters that are detailed in your report, that's what you're talking about?

242
MR. GLIST: No, it is not exclusively that. And I think that reference has been made to correspondence that's been put into the record indicating that the LDCs who own the essential facilities here have said, You may not make further attachments unless you cede to rates that we unilaterally dictate. And that is the kind of identical behavior that is referred to in the materials in the footnotes. That's an exploitation of monopoly power. It's addressed by regulatory responses.

243
MS. ASSHETON-SMITH: Actually, if I could add to that Mr. Ruby, too. When you asked earlier about the negotiations in other jurisdictions, the reason why those negotiations have gone well, with the exception of Ontario and New Brunswick, is likely the presence of an active regulator in almost all the other jurisdictions in Canada. Ontario, until now, has not had an active regulator. So that could be one reason why those negotiations go so smoothly.

244
MR. RUBY: Okay, Ms. Assheton-Smith. Let's go through that, because that's an important point. Are you saying there's an active regulator in British Columbia that regulates joint use?

245
MS. ASSHETON-SMITH: There's no need to do that because the ownership of the poles is split between Telus and B.C. Hydro, so that the poles themselves are split up so that access can be got to the Telus portion of the pole.

246
MR. RUBY: In Alberta, other than the TransAlta decision, is there any other regulatory decision dealing with joint use?

247
MS. ASSHETON-SMITH: Once the regulator has acted, there is an incentive to the parties to bargain differently because they know if there is a disagreement, it can go back to the regulator.

248
MR. RUBY: Ms. Assheton-Smith, have you reviewed the TransAlta decision?

249
MS. ASSHETON-SMITH: Yes, I have.

250
MR. RUBY: Right. Will you agree with me that TransAlta applied for the rate in Alberta?

251
MS. ASSHETON-SMITH: Yes, they did apply for the rate in Alberta. But that doesn't change the fact that the Alberta Board did look at the decision, set a rate, and that if there are further disagreements or disputes between the parties, they know that there is an expert tribunal that can address those concerns.

252
MR. RUBY: Okay. And Saskatchewan, has there been any regulatory ruling on joint use?

253
MS. ASSHETON-SMITH: Again, in Saskatchewan, it's a very different situation with Saskatchewan Power. There is, I believe in Saskatchewan, at least a Public Utilities Board that could exercise jurisdiction if it needed to.

254
MR. RUBY: Okay. In Manitoba, has the regulator made a ruling on joint use?

255
MS. ASSHETON-SMITH: The regulator is actively supervising those negotiations.

256
MR. RUBY: Okay. My understanding is that's a private arbitration. Do you know whether that's the case or not?

257
MS. ASSHETON-SMITH: I'd have to confess I'm not familiar with the case -- with the Manitoba Hydro arbitration.

258
MR. RUBY: All right. We know what's going on in Ontario.

259

MS. ASSHETON-SMITH: Yes.

260
MR. RUBY: In Quebec, does the regulator in Quebec regulate joint use?

261
MS. ASSHETON-SMITH: It could.

262
MR. RUBY: Okay. But does it?

263
MS. ASSHETON-SMITH: It hasn't had to yet.

264
MR. RUBY: And I'm quite happy to keep going across the country.

265
MS. ASSHETON-SMITH: And I'm quite happy to have you keep going across the country. And I think the point is, where both parties know there is the possibility of a regulated rate at the end of the day, if there is a dispute, it changes the behavior of the parties, and when there is no regulator to provide that backstop authority, it creates the kind of situation that Mr. Glist has just been describing.

266
MR. RUBY: Okay. Well, we've certainly got a great deal of evidence on how things work in other provinces in this proceeding. So perhaps I'll leave it at that.

267
MR. KAISER: Thank you.

268
MR. RUBY: Unless the Board would like me to finish the country.

269
MR. KAISER: No, I think you've gone far enough across the country for us.

270
MR. RUBY: Thank you.

271
Mr. Glist, is it fair to say that in the United States, at least in part, all of the regulators that you've referred to in your evidence have at the very least considered issues of telecommunications policy and incenting the rollout of new technologies?

272
MR. GLIST: All of them.

273
MR. LYLE: Mr. Glist, could you speak a little more clearly?

274
MR. GLIST: Yes. I'm just thinking just for a moment about all of them. I would say that all of them have proceeded from the first principles of cost allocation based on proportionate use. And many of them, because they have both jurisdiction over electric utilities and telecommunications utilities, have looked at policy issues arising from both camps.

275
The courts have said that anything above incremental cost is just compensation. They have not looked at

the additional policies.

276
MR. RUBY: All right. Does the State of Michigan have jurisdiction -- let me go back a minute to something I'm not clear on. You've referred to a State of Michigan decision with respect to joint-use access.

277
MR. GLIST: Yes.

278
MR. RUBY: Was that a regulator or the State itself?

279
MR. GLIST: Both. The situation in Michigan was that the legislature had one statute addressing poles for telecommunications purposes, and they had a Public Service Commission that was charged with supervising just and reasonable rates for poles that did not have telecommunications uses on them. And the statute adopted by the legislature followed the normal process of allocating costs according to proportionate use. The electric utilities went -- in the Public Service Commission, said, You don't have to follow that model here, all you need to do is be just and reasonable. You can follow any other formula.

280
And the Michigan TSC said, Wait a minute, these are poles that are interspersed in a single pole line. You know, you might have four owned by telephone, six owned by power. And there is this convergence going on where power companies are getting into communications, becoming telecom providers. New telecom attachments get on these poles. It doesn't make sense to apply a different formula to the solely-owned electric utility pole. And so the Public Service Commission said, We are going to follow that same proportionate-use model, and, in fact, to save transaction costs, because we know that the formula gets you well above incremental costs, we'll set a uniform, State-wide rate.

281
So that's the reason that I cited it in the reply report. I thought it was analogous in many ways to the situation that you all have where the CRTC has said something that's been held to apply to telecom poles, and you have independent jurisdiction to address the other half of the pole line.

282
MR. RUBY: Ms. Assheton-Smith, you'll correct me if I am wrong, but I seem to recall that in the appeal of the CRTC decision about setting joint-use rates for power poles, the CCTA took a similar position to the one Mr. Glist just talked about, that it's a bad idea to have, I think it was called hop-scotch between the poles. That you would have a few power poles, then a few telephone poles, and there shouldn't be a different rate between them. That was a position I think the CCTA took.

283
MS. ASSHETON-SMITH: The argument to the Supreme Court in support of our suggestion that there should be a single regulatory authority over all poles, of course, was rejected by the Supreme Court of Canada. But, yes, that was one of the arguments that was made.

284

MR. RUBY: All right. Thank you.

285

Mr. Glist, if you can just turn to, I guess it's the bottom of page 14 of your report, over to 15. You're talking about a NARUC report. And over on -- to line 1 of page 15, you refer to the average pole rent in the U.S. being $4.19 U.S. for telephone and $5.45 U.S. for electric.

286

Is it your position that anything over these prices is an abuse of market power?

287

MR. GLIST: What I'm citing here is an average. You understand that you might have pole rents at 2.50 and you might have pole rents at 7.50 in those states that do not have a uniform rate across the state. What I'm saying here is that you can get a snapshot of the outcome of proportionate-use pricing by looking at the NARUC study of what are charged in -- across these jurisdictions.

288

MR. RUBY: Yes. And is it your position that there is some maximum dollar rate beyond which the rate becomes abusive, or is an indication of an abuse of market power by the electricity distributor?

289

MR. GLIST: Well, it's my position that I hope I make clear in the reply, that one needs to look practically at the outcome of hypotheses. So, if I read a report that hypothesizes a market in which cable operators can't simply build a parallel plant, and they have equal bargaining power, and therefore they should be charged one-third, one-third, one-third, I can run the math and see that the resulting rates from that hypothesis, which we think is fantasy, but the resulting rates from that hypothesis are far above the rates found just and reasonable under the kind of proportionate-use formula that Mr. Ford is proposing.

290

MR. RUBY: All right.

291

MR. GLIST: So I'm trying to use that as a set of objective empirical data points that can be used to judge the reasonableness of a proposal that says, Go higher.

292

MR. RUBY: Mr. Ford, I'll ask you the same question. Is there some maximum rate at which point it's your view that there's an indication -- or that that constitutes an abuse of market power by the electricity distributor?

293

MR. FORD: I haven't turned my mind to that question before, but off the top of my head, anything which is significantly above a rate which is derived from the recovery of incremental costs and a proportionate use-based contribution, anything significantly above that. But I'm afraid can I not define "significantly above."

294

MS. KRAVTIN: If I could comment. I mean, certainly the economic literature does talk in terms of deviation from incremental costs, in terms of trying to identify and measure market power. And that's consistent with what Mr. Ford is saying; that you have your benchmark of incremental costs, and then obviously his methodology adds a contribution. But, to the extent that you look at how much above percentage-wise incremental costs that rate is, it starts to give you an idea. There may not be one magic number, but, obviously, if it's 10 percent above incremental costs, that's much different than if it's 100 percent or 200 percent.

295

MR. RUBY: All right.

296

MS. ASSHETON-SMITH: Mr. Ruby, just before you finish, could I just clarify something for the record on the Supreme Court decision. I just wanted to not leave the wrong fact on the record, that the Supreme Court didn't actually address the hop-scotch argument, it was really just addressing the statutory language of the Telecom Act. I just didn't want to leave the wrong impression that they addressed that and dismissed it in their decision.

297

MR. RUBY: I think it's fair to say that it's not addressed in the decision, but it was one of the arguments made.

298

MS. ASSHETON-SMITH: But it was not addressed in the decision, I just wanted to make sure that was clear.

299

MR. RUBY: Right. Mr. Chair, if I could just have a moment.

300

MR. KAISER: Yes, certainly.

301

MR. RUBY: Thank you.

302

Mr. Ford, a moment ago we were talking about whether particular rates are abusive, in your view. Is the equal sharing of common costs abusive, in your view?

303

MR. FORD: If that were approved by a regulatory body, then by definition it would not be abusive. I certainly don't think it's appropriate to determine the extent of contributions on that basis. I don't think it -- I don't think it is a reasonable way to do it. Whether that would result in a rate that is significantly above what I have determined, I don't know. So I gave you before an undefined level of significance. And I would -- I would have to --

304

MR. GLIST: I think it could be abusive, and that's one of the reasons it's been so widely rejected by other regulatory tribunals, and they look to proportionate allocation of the booked costs of the essential facility.

305

MR. RUBY: Right. Well, Mr. Chair, I have always been taught that it's a good place to end when the experts don't agree with each other. So those are all my questions. Thank you.

306
MR. KAISER: Thank you.

307
Who is going proceed next? Is that you, Mr. Dingwall?

308
MR. DINGWALL: That's correct, sir.

309
CROSS-EXAMINATION BY MR. DINGWALL:

310
MR. DINGWALL: Good afternoon, panel. My name is Brian Dingwall. I'm counsel to Energy Probe Research Foundation, which is an intervenor in these proceedings, representing end-use customers and with a long history of doing so in front of this body.

311
Where possible, I'd be assisted if the panel took their own initiative to choose who might answer a question. I'll have some specific questions for Mr. Ford later on, but I certainly welcome whatever contributions any individual might be able to make.

312
Firstly, with respect to this application for an interim rate, what is the time period that you believe is appropriate for that rate to apply?

313
MS. ASSHETON-SMITH: If I could just ask for a clarification. Are you talking about the interim relief?

314
MR. DINGWALL: Yes.

315
MS. ASSHETON-SMITH: I believe that Mr. Brett indicated yesterday that we were abandoning the request for interim relief.

316
MR. DINGWALL: With respect to --

317
MS. ASSHETON-SMITH: Sorry. The original idea was that the application for interim relief would apply pending the outcome of the Board's decision on their request for final relief.

318
MR. DINGWALL: So then, with respect to the rate, the rental rate, what time period do you see that rental rate being in effect for?

319
MS. ASSHETON-SMITH: Well, I'll take a stab at this. If anyone else wants to join in afterwards, but I think what we'd anticipated is that it would be a licenced condition that would be applied until a subsequent examination of the data would change the rate, thus it would be a regulated charge, and that it would apply until the Board changes the regulated charge.

320
MR. KAISER: Mr. Dingwall, were you dealing with the retroactivity question?

321
MR. DINGWALL: Not yet, sir. That's next.

322
I understand from discussions yesterday that there are a number of contracts between local distribution companies and cable or other telecommunications carriers that have a clause in them which would enable that agreement to reach back in time and adjust the rental rate with whatever rate might be emerging from these proceedings. Could you give me an indication of what ballpark proportion of the agreements in place contain that retroactive clause?

323
MS. ASSHETON-SMITH: Just give me a moment.

324
I think it's safe to say -- sorry, I think it's safe to say that the large majority of agreements that we have in place are in place because they have a retroactivity clause, and otherwise probably would not be in place.

325
MR. DINGWALL: Now, as I understand it, the last time that there was a global rental agreement in place was 1996; is that correct?

326
MS. ASSHETON-SMITH: That's correct.

327
MR. DINGWALL: So for what time period is there the potential that there could be retroactive adjustments?

328
MS. ASSHETON-SMITH: I believe it's January 1st, 1997.

329
MR. DINGWALL: And this again would be for the bulk of the rental agreements out there?

330
MS. ASSHETON-SMITH: That's correct.

331
MR. ARMSTRONG: If I could just clarify one comment about that. I can speak for Rogers' standpoint. Some of our agreements go back to January 1, 1997, but others we didn't enter into interim agreements until later. So it's a little bit all over the map, but the majority of them would be January 1, 1997.

332
MR. DINGWALL: I'm trying to get an understanding of what the ballpark dollar figure that this Board is going to be dealing with is likely to be. Is there any information available as to what total pole rentals on an annual basis might have been in terms of a dollar figure for 1996?

333
MS. ASSHETON-SMITH: At what rate?

334
MR. DINGWALL: At the rate that would then have been in place.

335
MS. ASSHETON-SMITH: I don't have access to that right now. Perhaps we could give you an undertaking to see if we can find that information.

336

MR. DINGWALL: What I'm looking for is a best estimate. So I'm happy to have the undertaking in that fashion. I wonder if we can reflect that on the record.

337

MR. LYLE: We'll make that Undertaking F.2.1.

338

MR. BRETT: Just so I'm clear, Mr. Dingwall, it's the actual revenues to -- paid by each of the cable companies for these rates in that year or is it the revenues by LDC, or is it the totals, I guess, you're looking for?

339

MR. DINGWALL: It's the total, Mr. Brett.

340

MR. BRETT: Okay.

341

MS. ASSHETON-SMITH: The total charges of all the cable companies to LDCs?

342

MR. DINGWALL: From rental rates.

343

MS. ASSHETON-SMITH: For pole charges?

344

MR. DINGWALL: That's right.

345

MS. ASSHETON-SMITH: Okay.

346

MR. KAISER: But Mr. Dingwall, isn't the question really that you're looking for is the amount of the refund, if any, that would come into place? If the rates get adjusted retroactively, let's suppose they get reduced, there would be a refund; correct?

347

MR. DINGWALL: From what I understand --

348

MR. KAISER: Isn't that the amount that you're looking for?

349

MR. DINGWALL: Well, eventually we'll get there. What I'm looking for is the starting point; to see, first of all, how much money is at play each year. 1996 was the starting point from when there was last an agreement.

350

MR. KAISER: So, if they tell you how much they're paying, these LDCs, do you need it for the entire period to go back to January 1st of '97 or do you need it for just one year?

351

MR. DINGWALL: Well, I think what would be the best information, and I'm not sure what's available. That's certainly something I intend to canvass in my remaining questions, is what the amount might be for the periods 1997-1999, when we begin PBR, and then what happens from 1999 to 2005. There are two separate time periods from the point of view of cost allocation and regulatory treatment.

352

MR. KAISER: Mr. Brett, is that something that you can calculate?

353
MR. BRETT: I thought initially, actually, Mr. Dingwall was asking for what they paid in '96.

354
MS. ASSHETON-SMITH: That's what my understanding -- I think that might be the only information that we would be able to actually gather. It was the only -- the last time we had, essentially, a uniform rate across the province.

355
MR. DINGWALL: To delve into that a little bit further, if you don't mind, Mr. Kaiser.

356
MR. KAISER: Yes.

357
MR. DINGWALL: I understood from the evidence yesterday that after the previous agreement expired, that there became some inconsistency in the rates applied by LDCs; is that correct?

358
MS. ASSHETON-SMITH: Yes. Almost immediately, I believe, they were all over the map.

359
MR. DINGWALL: And in addition to that, there are also some situations where cable companies have not paid the charges, pending resolution of the dispute?

360
MS. ASSHETON-SMITH: That is my understanding in some cases, although not the majority.

361
MR. GREENHAM: For clarity, in locations where -- for example, Oakville Hydro, we have not received a permit since '96, and we have not made payment since '96. So it's -- we're both striving to -- well, we're both waiting for a decision on this to be able to conclude this.

362
MR. KAISER: Does that many mean there have been no attachments since 1996?

363
MR. GREENHAM: We have made no new attachments since '96.

364
MS. ASSHETON-SMITH: Yeah, and perhaps this is a question more for the LDC panel, but it's not my understanding that the pole rental charges, even on the interim rates, are included in the LDC revenue requirement now. So I don't know whether there would, in fact, be an impact on the kind of refund or what the impact of that refund would be, if any. And that's an issue, I guess, that would have to go to the LDC panel.

365
MR. DINGWALL: Thank you for that.

366
What I'm wondering is, where would be the best place to get the information as to what the LDCs were charging post 1997? Was that ever created on a central basis?

367
MS. ASSHETON-SMITH: Certainly not at the CCTA level. We only have current rates aggregated -- on an aggregate basis for our members. We do not have that

information for the periods 1997 to 2004.

368
MR. GREENHAM: In Cogeco's case, every file has what was paid, what was requested on an individual -- like, I have 45 different hydro utilities that I deal with, and I have a file on each one, and it's tracking what was requested, what was paid, and what's outstanding, based on where they want the rate or we want the rate. And each one is not 100 percent tracked as efficiently as it should be, because these files have been transferred from one owner to another, and now are finally on my desk.

369
So there's inaccurate or not enough information, we would have to actually go with the LDC to go through each year to come to a determination after a final rate is derived, to come up with what's owing and what's not owing and what's due and has a credit.

370
MR. KAISER: Let me understand that. You must know how much you're paying the LDC's annually now.

371
MR. GREENHAM: Yes.

372
MR. KAISER: That is to say, your company.

373
MR. GREENHAM: Yes.

374
MR. KAISER: Although I guess the discrepancy is, you may not be paying all of the bills. Is that the problem?

375
MR. GREENHAM: You're right. There are some bills that are not being paid.

376
MR. KAISER: But at least if Mr. Dingwall wanted to get a measure of, I'm going to call it, the amount of the refund, or potential refund, you could calculate it for Rogers and you could calculate it for Cogeco.

377
MR. GREENHAM: On an individual, LDC basis.

378
MR. KAISER: Well, can't you do it on an aggregate basis? Let's suppose you're paying X dollars a year now, Cogeco is.

379
MR. GREENHAM: An average over the 45 --

380
MR. KAISER: And let's suppose he asked you -- I don't know what his question is going to be, I probably shouldn't be asking you this, what would you pay if Mr. Ford's rate is adopted? There would be a difference; right?

381
MR. GREENHAM: Yes.

382
MR. KAISER: Likely a reduction.

383
MR. GREENHAM: Not necessarily. I have some utilities, very small utilities, in the northeast of Ontario that are still charging the $10 rate, which was from '96. I also have utilities that are charging $40.92, and that have paid. It is all over the map, and like, it would be very difficult on a per-pole basis to come up with what that average rate is, because in the smaller systems I'm on 300 poles, and in the larger systems I'm on 25,000 poles. So to come up with an average rate for each one of those and try and come up with what that cost is, that's very difficult. It takes some math.

384
MR. DINGWALL: Mr. Greenham, does your company accumulate records of what is paid annually as well as what has been billed and not paid?

385
MR. GREENHAM: I'm assuming they do. That would be done in the Montreal office, and I'm not privy or I don't track those things.

386
MR. DINGWALL: How about Mr. Armstrong?

387
MR. ARMSTRONG: I believe that our national facilities coordinator has some figures to that effect, that we know -- I think -- obviously we know how much we paid. How much has been billed and not paid, I'm not sure we have a handle on that.

388
MR. GREENHAM: If I could add. I know that in our annual report we always identify that risk, and it's in our annual report as to what risk is there with not paying full rates on the -- with the LDCs that are being requested. So --

389
MR. KAISER: Mr. Armstrong, are you paying all your bills, or not?

390
MR. ARMSTRONG: Yes, Mr. Chairman. We pay our bills. There are certain bills that -- for example, there are bills that we would receive that have a rate in it of $45 where we don't have an agreement. We'll pay it at the highest rate that we pay to a neighbouring distributor, and try to seek an agreement in that case.

391
MR. KAISER: Now, Mr. Dingwall, I know -- and I take it that you're trying to get some idea of what the potential payment by LDCs might be under this retroactivity term they have in their agreements. But it looks like it's going to be a lot of work. How important is this for you?

392
MR. DINGWALL: I think, frankly sir, that for the purposes of understanding the ballpark, the '96 figure's going to give a good indication. The balance of the accounting exercise is really going flow from the decision in this case, and isn't something I think it

would be fair to put the witnesses to, on this side. I'm going to have similar questions of the LDC representatives in order to understand what information might be available from that side, as well.

393
MR. KAISER: Would it be easier for you if you asked your questions up here instead of talking into the back of their heads?

394
MR. DINGWALL: It would be, sir. I think I could move up.

395
MR. KAISER: Mr. Lyle, do you think you could accommodate Mr. Dingwall?

396
MR. LYLE: Certainly, sir.

397
MR. DINGWALL: Do you want to do that on a break, sir, or would you be happy with the interruption?

398
MR. KAISER: No, do it now. It wouldn't take long. While you're moving, do I understand that you would be satisfied with the '96 data?

399
MR. DINGWALL: That's correct.

400
MR. KAISER: Is that possible, gentlemen?

401
MS. ASSHETON-SMITH: We may be able to get a rough estimate. One of the problems we may have is with some of our very small systems who may not have that information, but, certainly, for the vast, vast majority of our large members, we would be able to get a number.

402
MR. KAISER: So we'll do it on your best efforts, an estimate.

403
UNDERTAKING NO. F.2.1: TO PROVIDE FIGURES FOR TOTAL POLE RENTALS PAID BY ALL CABLE COMPANIES TO LDCs IN 1996

404
MS. ASSHETON-SMITH: Yes, sir.

405
MR. KAISER: Don't run out and hire a consultant or anything.

406
MS. ASSHETON-SMITH: Thank you.

407
MR. DINGWALL: With respect to the negotiations that have taken place over the years with the local distribution companies, have the cable companies been provided by each LDC in the course of those negotiations with what -- with documentation or with information that would lead you to have an understanding and backup to support what the suggested changes in costs might be?

408
MS. ASSHETON-SMITH: Perhaps Mr. O'Brien and Mr. Armstrong and Mr. Greenham could address that.

409
MR. ARMSTRONG: The only information that I've ever been offered by anyone is the information from the Milton study that resulted in a rate of $40.92, and which was at the nub of the dispute since '97. Other than that, I've not received any costing information from any LDC.

410
MR. GREENHAM: Grimsby Hydro had their own take on how to come up with a rate. And their rate that they came up with was $30 a pole. However, they wouldn't give us a retroactive clause in the agreement, and I can't recall how they came up with that. Mr. Weber's going to be on a panel tomorrow, or on his own tomorrow. Perhaps you could ask him how he came up with that $30 rate.

411
MR. DINGWALL: So what I'm hearing is that only two -- there are only two instances where LDCs made specific information available with respect to what the actual costs supporting their suggested rates might be.

412
MR. O'BRIEN: Certainly, from the smaller system perspective, there's been no information come forth.

413
MR. ARMSTRONG: I don't want to misspeak. There wasn't just one time that an LDC had said to me, We're adopting the Milton information. That might have -- I mean, back in 1997, when I wasn't in this position, didn't work for Rogers, that may have happened more often than just once. And since I've taken this position five years ago, I can think of -- on two occasions when an LDC has said to me, We'll adopt the Milton information.

414
And I also want to just clarify, Mr. Dingwall, that often what I've been given when I've asked for additional information about how a number's derived, the answer becomes, We just took our last rate and added to it additional capital costs and incremental costs, and we're at a rate of X now.

415
MR. DINGWALL: I understand that, except for some isolated extreme circumstances, you are continuing to operate your businesses and gain new attachments to poles; is that correct?

416
MR. ARMSTRONG: From Rogers' perspective, I would say that it's -- yeah, you know, yes, we continue to operate our business. We continue to serve our customers. We have some real challenges in certain areas with certain LDCs. We continue to speak on an ongoing basis with those LDCs to try and work through them, but these are issues that have been going on for a number of years, and we still haven't come to any resolution to them.

417
MR. DINGWALL: I'd like to move to page 26 of Mr. Ford's document. I see that line E on that document contains a depreciation expense. What's the presumption around the depreciation rate for that expense, Mr. Ford?

418
MR. FORD: That was not provided in the Milton costing data, but it appears as though it -- because the embedded cost of the pole, the original historic costs of their poles, on average, was

not provided. It is, however, consistent, I believe, with something in the range of probably 3.5 to 4 percent, and I understand that 4 percent, which is the straight-line depreciation over 25 years, is pretty standard. But the number of $31.11 was a number that was provided in that costing information as depreciation, and I accepted that for purposes of putting together a rate that I could recommend to the Board.

419

MR. DINGWALL: I believe the accounting procedures handbook carries with it a 25-year straight-line rate for poles. Is that -- you mentioned that the rate, or the rate that is assumed within your calculations, is somewhere between 3.5 and 4?

420

MR. FORD: No. I'm sorry. I adopted the $31.11 rate. I cannot tell you the origin, but I can tell you that it appears to be consistent with a rate that is probably somewhere in the range of 3.5 to 4 percent. And if somebody from Milton were to tell me -- or ask me if I would disagree that it could be 4 percent, I would have to say it could well have been 4 percent.

421

You know, I think that was probably standard practice at the time that the data was put together, but I do not have the embedded costs. That data was not -- or at least I don't believe that data was provided. I could not find it when I looked through, and therefore I could not determine the actual percentage.

422

MR. DINGWALL: Now, with respect to line G in your calculation, the capital carrying cost, is this intended on reflecting the actual utility debt rates, or really a rate of return on the asset?

423

MR. FORD: I'm sorry, are you asking me if it reflects one or the other?

424

MR. DINGWALL: Yes.

425

MR. FORD: I believe it reflects both. I mean, that's what I intended to determine, was both the embedded cost of debt and the pre-tax or, perhaps I should use the term "pre-pill" cost of equity. And I think I ran through that in some detail on page 25 of my evidence, which shows that I used the deemed capital structure, the allowed return on equity, took into account the pill, or payments in lieu of income taxes which would apply, and worked out a -- oh, sorry, the embedded cost of debt, the utility's embedded cost of debt, and arrived at a pre-tax cost of capital, which was then applied to the net-embedded cost of the pole to arrive at the capital carrying cost.

426

MR. DINGWALL: So you used the deemed debt rate as the basis for your calculation?

427

MR. FORD: Can I just -- I used an interest rate of 6.9 percent. I believe that is the deemed debt rate.

428

MR. DINGWALL: Okay. With respect to the determination of administrative costs and loss-in-productivity costs, are there accepted definitions of these terms used in the calculation of these charges in other jurisdictions?

429

MR. FORD: I'm not sure that I would go as far as saying an accepted definition. I think there's a general understanding that administration costs are those costs of the utility that are incurred for the administration of pole attachments, pole-usage agreements, and the billing and collection associated. And it is on an incremental basis. It is the cost that they would not -- the utility would not incur but for the presence of the user in the communications space.

430

Similarly the loss in productivity is intended to reimburse the utility for the costs that it would not incur but for the placement of those cables in the communications space, and are intended to cover the extra costs incurred by the utility for its work crews, having -- taking extra time to do their work, to do their maintenance work, to do their construction work on the poles, as a result of the presence of the cable company's cables in the communications space.

431

Now, the CRTC has made reference to certain descriptions such as I've just given you in their decisions, and the decisions themselves are footnoted in my evidence. And I could, if it would be of assistance to you, make those available to you or read them into the record. I'm not sure how deep you want to go with that question. But I would say there is not a methodology that has been applied, that there is not a formula, for example, for determining that.

432

MR. DINGWALL: Now, your loss-of-productivity calculation, for example, is based on a 1991 study. Are you aware of any other studies that have come out since that time that might update that number?

433

MR. FORD: There were some numbers that were put forward by Bell Canada and B.C. Tel at various times in proceedings before the CRTC. However, I don't believe those numbers are particularly relevant, because what you're talking about is the productivity impact on a utility or on a service provider that's operating in the same physical space, very close proximity. So I don't believe that that would have much relevance. And my belief is that those numbers are probably in 1992 or 1993 data, because the decision that looked at that was last rendered in 1995.

434

MR. DINGWALL: But in the case of administrative costs it seems that the information is much more current, being 1999.

435

MR. FORD: That is what was -- that was the CRTC's estimate. I would have -- I'll be a little bit cautious here, but I'm not sure that that was supported by any data put forward by the

participants in the case. I believe the loss in productivity number was -- and, in fact, has been made reference to by one of the filings by the LDCs here. I did take the opportunity to look back at that information, and it was actually based on what were only termed "estimates" of three utilities. One of them had 2,000 poles. The others had 37,000 and whatnot, and the highest of all was from the company that had 2,000 poles. It was $4 per pole, per year, and it was a simple numeric average of those three.

436
So the number itself is, I would said, not totally justified. There is not a good basis for it. It was a 1991 figure put forward by the MEA in a one-page memo. They brought the number forward to, I believe it was 1997, and then I took that number and again brought it forward. However, since it was per pole, I divided it between two users. So that's how I arrived at the number of $1.92.

437
MR. DINGWALL: Okay. Moving back to poles for a minute, we discussed what the depreciation assumptions usually are. What is the useful life of a pole, generally, likely to be?

438
MR. FORD: That is not something that's within my area of expertise. I would certainly -- I'm not sure whether we might not have a better person to speak to that, perhaps on another panel. But I will check with our industry experts and see if they have any information at all as to what the useful life of a pole might be.

439
MR. GLIST: At least for the U.S. electric utilities that I've studied in detail on this question, the useful life, that is, years in actual service extend beyond the depreciation schedule, in actual practice. So we actually have some pole owners that run negative balances in their net-pole account.

440
MR. DINGWALL: And looking at a net-embedded cost per pole on a utility-by-utility basis, I take it the numbers would be significantly different from utility to utility?

441
MR. FORD: Well, as I indicated when I was replying to a question yesterday from counsel for EDA, I would like to have been able to know that information. However, I was somewhat encouraged that, you know, based on data that was provided in respect of Hamilton Hydro, that the net-embedded cost per pole for a utility, which is about four times the size of Milton, appeared to have a net-embedded cost per pole which was almost identical. Now, I would suspect that there would be a variance. I was quite surprised at the similarity. So, while I would have expected probably a little wider variation, that would indicate to me that, perhaps, there is not such a wide variation.

442
MR. DINGWALL: What are the elements that could drive the variation in that number?

443
MR. FORD: One would be the original cost of the pole, or the original cost at the time they were installed. So if the poles on average are older poles, when the installed cost was

lower,
that would be one factor. A second factor would be would be the age, sorry. The age of
the poles themselves, on which, of course, the accumulated depreciation would be
greater. So when you're talking net embedded, it is the original cost less the accumulated
depreciation. So the number of years over which depreciation has been accumulated
would be one factor. Now, we're talking, of course, the average across the entire pole
population. So we're talking the average age of the pole, and the longer ago they were
installed, the lower would be that number.

444
MR. DINGWALL: So if you're looking at an individual LDC that had a high proportion of new
poles, would it then have a higher net-embedded pole cost?

445
MR. FORD: I would expect that it would, all other things being the same; yes.

446
MR. DINGWALL: So, then, in order to gain representative sampling to determine an appropriate
charge, what would that sampling look like?

447
MR. FORD: I would like to have had a sample of all of the companies. I would have liked to have had
data from all of the companies. And I think it was demonstrated that, in the methodology
put forward by Hamilton Hydro, that it can be, in part, derived from the standard uniform
system of accounts data. At the motions day, it was not ordered that it put forward the
accumulated depreciation account, but rather the annual depreciation amount. So we
could not actually calculate for any of the companies that did provide some data what
that number would be. I'm not -- I believe it would not be methodologically difficult to
determine that.

448
MR. DINGWALL: So the piece of information that's missing is the accumulated depreciation for the
utilities who provided responses?

449
MR. FORD: That is, that is the major thing. The only other difficulty is, as I peruse the data, and
you'll understand that I like you got it middle to late last week, I haven't had time to go
through it in detail. It was obvious to me there were some outliers. Some of the numbers
showed zero balance in the pole and fixtures account. So there will be some outliers that
probably could not be taken into account in developing a representative number. But I
would think that for those who have applied the uniform system of accounts properly,
that those two numbers would be -- would go a long way towards determining it.

450
There is also a standard, I don't want to use the term generally-accepted methodology, but certainly I
have seen it suggested in a number of places, including the Hamilton Hydro, and I believe appendix E to
the in-process draft MEARIE agreement, as well as before the FCC, that for power poles, 85 percent of
the assets in that account are determined to be power-specific. I'm talking the 1830 asset account. So that
roughly 85 percent of the amount on a representative basis is the bare pole, which is the

relevant
calculation for determining both the embedded and net-embedded costs for use in a calculation such as I
presented here.

451
MR. DINGWALL: In the EDA's submission at page 14, they identify a number of other cost
categories that they suggest should be looked at in order to gain a full understanding of the costs and the burdens on the system.

452
MR. FORD: Could you just pause for a second while I pull out the data -- the application -- or the
evidence?

453
MR. DINGWALL: Certainly.

454
MR. FORD: I believe I have the evidence. And you asked me to turn to page?

455
MR. DINGWALL: 14.

456
MR. FORD: Page 14, and paragraph?

457
MR. DINGWALL: Well -- I'm going to open this question up to the panel in general. There are three
cost considerations which I'll summarize briefly. One is the relative costs that
would be incurred by each user on a stand-alone basis, and I believe we had a significant number of questions about the ten poles and I won't go back there. Then the question of the relative revenues of users and the question of rate impacts on customers of each user. Are cable companies in Ontario currently subject to rate regulation?

458
MS. ASSHETON-SMITH: No, they are not.

459
MR. DINGWALL: From the period 1997 to the current date, were they subject?

460
MS. ASSHETON-SMITH: It varies. The CRTC introduced an approach for rate deregulation of
large cable companies. I should preface this by saying that only the basic tier of cable services has ever been rate regulated. So discretionary services such as pay-per-view, some of the specialties, pay-on-demand, those have never been rate regulated, nor have many of the smallest systems been rate regulated for many years.

461
So with respect to the large systems, which are 6,000 subscribers and above, in 1998 the Commission
created a formula or an approach by which cable companies could seek to be rate deregulated. And since
2001, I believe was the first application, subject to check, was the first application by a cable company
for rate deregulation, having lost a market share to satellite companies, which then allowed it to seek rate
deregulation. As of this time, I believe that all cable companies in Ontario are rate deregulated.

462
MR. DINGWALL: Do cable companies' infrastructure extend beyond power poles? Are there other
forms of attachment or transfer -- laying of cable?

463
MS. ASSHETON-SMITH: The plant definitely expands beyond the cable wire itself, and perhaps I can ask Steve or John to comment on this.

464
MR. ARMSTRONG: If I understand your question correctly, you are asking if we attach our equipment to poles other than those owned by hydro distributors?

465
MR. DINGWALL: Or do you use other methods to get cable into the marketplace, apart from poles?

466
MR. ARMSTRONG: Poles, periodically we use conduit, periodically we directly bury it into the ground.

467
MR. GREENHAM: We extend our plant beyond just using hydro poles. We use Bell poles, we go underground, we don't service more customers than the hydro utility does. They're also feeding those customers in other methods as well. In a new subdivision, for instance, municipalities don't like to see poles in Ontario, and everybody goes underground.

468
MS. ASSHETON-SMITH: I think it's safe to say, though, that the vast majority of our customers in Ontario are served through power poles, power pole distribution of our plant. Is that fair to say?

469
MR. ARMSTRONG: At some point.

470
MS. ASSHETON-SMITH: At some point in the network.

471
MR. DINGWALL: Do you separate out the revenues? Is it possible to determine what revenues are received by cable or other telecommunications carriers specifically with respect to the power pole infrastructure?

472
MS. ASSHETON-SMITH: No.

473
MR. DINGWALL: So, in terms of the suggestion that we look at the relative revenues of users of power poles, is there a way to determine what revenue you derive from power poles and attachments?

474
MS. ASSHETON-SMITH: We don't derive any revenue from power pole attachments. If you're asking whether the revenues of the users are a relevant consideration, you know, I think we've gone on the record stating that that's an inappropriate and I believe unprecedented consideration, although I'd ask Mr. Glist to comment on it as well.

475
MR. GLIST: I think you're right. In the end, you're looking at the costs, and the utility pole, it's an input, it's not a revenue source to a cable company.

476
MR. DINGWALL: Mr. Glist, in your experience in the United States, is the

relative revenue of users
used in any jurisdiction to examine the appropriate costs of power pole attachments?

477
MR. GLIST: The only time that I can ever remember it coming up was in an interrogatory in the
Massachusetts DTE, where they asked me to calculate the kilowatt hour impact on electric utility customers and the impact on cable customers of the relief being
considered, so I submitted that analysis. It never showed up in the order. That is the only
time that I can recall it coming up.

478
MR. DINGWALL: This is an awkward question. If the Board produces its rate as a licence
condition, and that rate is substantially lower than either the aggregate or proportionate rates currently being paid, what's the impact on your customers?

479
MS. ASSHETON-SMITH: I'm not sure there would be any immediate impact on our customers, but
perhaps I could pass that to John Armstrong.

480
MR. ARMSTRONG: I'm not sure there would be any immediate impact on our customers whether the
Board set -- I mean, we're in a competitive environment right now providing services in --

481
[Court reporter coughing]

482
MR. KAISER: Possibly, Mr. Lyle, we could take the afternoon break at this time.

483
MR. LYLE: Certainly, Mr. Chair.

484
MR. KAISER: Is that satisfactory, Mr. Dingwall?

485
MR. DINGWALL: Certainly. I have only two short areas to cover --

486
MR. KAISER: I think that the reporter needs a break. Thank you.

487
--- Recess taken at 1:50 p.m.

488
--- On resuming at 2:14 p.m.

489
MR. KAISER: Please be seated.

490
Mr. Dingwall?

491
MR. DINGWALL: Thank you, sir.

492
I believe, before we took the break, there was a question that I don't believe the panel may have had a full
chance to answer, which was, in the event that -- as a result of the Board setting a rate as part of a licence
condition, there are significant funds flowing from the electricity LDCs back to the cable companies,
what would happen to the customers of those companies?

493
MS. ASSHETON-SMITH: I think we said that there would be no immediate impact, but that over time the impact could be beneficial to cable customers. I'm going to just hand that to John Armstrong to follow up on.

494
MR. ARMSTRONG: Yes. It reflects -- I think the impacts reflect the competitive environment that we deal in with the satellite distributors. And it's such a competitive market that our regulator has recognized that through the rate deregulation process. So we take our cues as a business operator, what to do with capital, from that competitive environment. And we would invest any, you know, capital accordingly, back in the business.

495
MS. ASSHETON-SMITH: Including, presumably, rolling out, perhaps, new and advanced services to customers and in areas where we haven't previously been able to serve.

496
I think the biggest benefit of having -- perhaps not the biggest benefit, one of the most significant benefits of having that charge established would be that we could get on with our business in many parts of the province where we have, perhaps, been frustrated in our attempts to do so.

497
MR. DINGWALL: What we're talking about in context of this hearing is a rate which would apply until it would be more possible to create a better rate.

498
MS. ASSHETON-SMITH: Mm-hm.

499
MR. DINGWALL: Is it the CCTA's view that the formula propounded by Mr. Ford should be the basis for a calculation of a future rate, in addition to being the basis for calculation of a rate that you're proposing today?

500
MS. ASSHETON-SMITH: I don't think we can speak to what would be appropriate based on new evidence that might come before the Board in the future. I think that what we're suggesting is that, on the basis of the record of this proceeding and the evidence that is in front of the Board, that Mr. Ford's proposed methodology would result in a fair and appropriate rate. I wouldn't want to speculate on what the Board might want to do in a different proceeding in the future. Although I would presume that, if we were faced with the same evidence, we would put forward the same, same approach. And perhaps --

501
MS. KRAVTIN: I was just going to add that the type of formula methodology presented by Mr. Ford is similar to the types of formulas that have been used for many, many years successfully in the United States. And part of their benefit is that it sets in place a formula that can be relied on by both the owner and the attacher to know what those rates would be and that they will be set in a fair and reasonable manner, and one consistent with economic principles.

502
MS. ASSHETON-SMITH: I think it's a methodology that has stood the test of time, and there's no reason to suspect that it would not continue to stand the test of time.

503
MR. DINGWALL: What I'm seeing, in looking at the component costs that are plugged into the formula, are matters that may or may not be updated in the next one-year, two-year or three-year period, and that's why I'm kind of wondering what the intended shelf life of the formula is. Is it the CCTA's intention that this formula become the basis for these calculations after the initial period?

504
MS. ASSHETON-SMITH: After which initial period? I'm sorry?

505
MR. DINGWALL: The period that the Board determines that there will be a licence condition. I'm presuming that in the relief that you'll be suggesting at the end of the day, you'll be suggesting that it apply either for a specific time period or until a conditional future event.

506
MS. ASSHETON-SMITH: I think until there is cost data in evidence to suggest that a different charge is appropriate, we would suggest that the charge should continue to apply. And it's one of the reasons why we've suggested a uniform charge, because, in the absence of the detailed costing data, it would be the most administratively simple and most efficient way to administer and implement the charge.

507
MR. DINGWALL: Now, this question is for Mr. Glist and Ms. Kravtin.

508
In looking at page 26 of Mr. Ford's evidence, it looks like a number of the elements from which he's derived the proposed costs and proposed rental charge are somewhat historical in nature. In your experience in the setting of rental charges in the various jurisdictions in which you've appeared, have these charges been set based on historical adjusted figures, or based on actual current costs?

509
MR. GLIST: The conventional approach - I mean, this is used across a lot of regulatory tribunals - is if you have it available, you use publicly-available input data showing, for example, the current net-embedded book costs of a bare pole as your base for calculation, and you would take the publicly-reported expense figure for maintenance, as an example.

510
So it's the embedded historical cost, as current as you can bring it, if it's available. There are occasions where it's not available. And then the regulator will use the best available evidence, which is sometimes borrowed from other utilities operating in the region, in order to develop a rate that is -- it ends up being above incremental costs, but it's deemed just and reasonable. Because you don't always have perfect information.

511
Am I addressing your question?

512
MR. DINGWALL: Yes, I believe so.

513
MR. GLIST: Okay.

514
MR. DINGWALL: It sounds like, then, you're saying that, where they've got available information, they use it, and where they don't, they extrapolate it.

515
MR. GLIST: Right.

516
MR. DINGWALL: And the extrapolation is based on experience in other jurisdictions?

517
MR. GLIST: Well, for example, I can think of a case where we might have had two dozen municipal distributors in Vermont. And the smallest ones just didn't have the data, you know, but the data available from the others was sufficiently representative that it could be adopted by the remaining distributors.

518
And so I think, when I looked at page 26, what I could see Mr. Ford doing was saying, Well, I can start with a net-embedded book that was advanced by a hydro that's been looked to as representative by other hydros in negotiations. And I'm going to assume, he says, that investment in new plant is roughly offset by depreciation of embedded plant. So I'll keep that level. But then, as I go to expense figures, I'll adjust those forward in order to try to bring them current.

519
So he's done the work that a regulator would do in the absence of publicly-reported, specific, current input data from each of the participants. And he's come to a number that is sort of above U.S. norms, but one that he's comfortable with as representative.

520
MR. DINGWALL: Okay.

521
Mr. Ford, in looking at, for example, net-embedded costs per pole, since that seems to be the most kind of localized small market figure, in any of the proceedings in Canada over the last few years, has there been a presentation of a net-embedded cost per pole figure for any of those LDCs?

522
MR. FORD: Not that I can recall -- I'm sorry, are you asking me if, for example, in Nova Scotia, the Nova Scotia proceeding --

523
MR. DINGWALL: Alberta seems to come to mind as being the one with the closest thing to a determination.

524
MR. FORD: Well, as I say, I was not involved and haven't had access to the record of the proceeding in Alberta, so I don't -- I only have the decision. And there was no reference to that in the decision. I would have available, I believe, somewhere, the data that was used in Nova Scotia. As a matter of fact, I'm not sure it isn't in the decision, because the decision was quite detailed with respect to the application of the methodology, so we might, in fact,

find that number if I were to look there. In any case, it's something I could certainly provide, what the embedded, net-embedded pole costs were.

525
It is a starting point whenever a methodology like this is used, and it is a methodology that was used in Nova Scotia. It was the methodology that's been used by the CRTC in -- when evidence has been provided from the telephone companies, for example. So although that data is quite dated at this point, the last of it being about 1994. So Nova Scotia would be the most recent data. Now, that's a large utility, but I'm not sure that the figures for net-embedded costs would vary that much from what I've seen here.

526
MR. DINGWALL: I wonder, then, before I ask for the undertaking, they would have also reported some form of depreciation expense associated with that?

527
MR. FORD: Yes, they would have. Yes.

528
MR. DINGWALL: I'm wondering if I could ask you, then to make reasonable efforts to review your records and provide, if possible, the net-embedded cost per pole and depreciation expense in respect of the Nova Scotia utilities case.

529
MR. FORD: If you just give me a minute, I may possibly have it.

530
MR. KAISER: Is it not in the decision, Mr. Dingwall? Have you looked at the decision?

531
MR. DINGWALL: I don't have it to hand, sir.

532
MR. BRETT: Mr. Chairman, I think the decision may be in the record already as an attachment to the Allstream evidence, and I think Mr. Ford is just having a look at that.

533
MR. KAISER: Is that page 35, Mr. Ford?

534
MR. FORD: I'm looking at page 35 of the decision, and I see -- the numbers I believe you were asking for, Mr. Dingwall, were the net-embedded costs per pole, and that is $342. And the depreciation per pole is in the next line down. I'm looking at, by the way, the numbers under the heading: "Board-approved," although I do note that these numbers are the same in all columns. $342 for the net-embedded cost per pole, and $23.55 for the depreciation.

535
MR. DINGWALL: Thank you, sir. I certainly won't be asking for the undertaking, then.

536
MR. FORD: Thank you.

537
MR. DINGWALL: And do you view the Nova Scotia utility as being in similar circumstances with respect to age of plant or infrastructure to the general Ontario situation?

538
MR. FORD: I did notice that there was a reference to typical 40-foot pole, but also a reference to 30-foot service poles. So I'm not sure that it said 342 dollars in that decision was based solely on the total pole population. I'm not sure what that meant, exactly. And perhaps there is something in there that would account for a smaller number. I'm not sure.

539
MR. DINGWALL: All right. I'm wondering, Mr. Ford, whether you've done, at any point, a calculation, just out of curiosity, with respect to the 1996 pole rental rate and what would happen with that to adjust it for inflation to today's costs.

540
MR. FORD: I'm sorry, I'm not sure what you're referring to. You mean the rate that was uniformly in effect --

541
MR. DINGWALL: That's correct.

542
MR. FORD: -- prior to that time? I have not done that calculation, and I'm not sure what that rate was, actually, to be honest. I think it would be a fairly simple calculation to take that rate and bring it up to today using an agreed inflation factor such as the CPI. It would be quite an easy number to calculate, I believe.

543
MR. DINGWALL: I wonder if I could ask you to do that, then, sir.

544
MR. FORD: I'd be happy to give an undertaking to provide that.

545
MR. LYLE: Sorry, just mark that as Undertaking F.2.2.

546
UNDERTAKING NO. F.2.2: TO CALCULATE THE 1996 POLE RENTAL RATE AND ADJUST IT FOR INFLATION TO TODAY'S COST USING AN AGREED INFLATION FACTOR SUCH AS THE CPI

547
MR. DINGWALL: And finally, what appears to be a potential result of this proceeding is that the Board might set a rate, it might not set a rate or it might set a rate and leave some degree of adjustment open. It might be that one of the questions is, who takes the risk pending adjustment? Should it be a definite rate set or should it be a rate that could be open to variation? Should it be a rate that applies until it's varied? I was wondering whether or not you have any thoughts in that regard on those different parameters.

548
MS. ASSHETON-SMITH: Let me break this into two areas. First, the application of the rate on the date that it's made. And in the settlement agreement that was went through yesterday I think the parties, with the exception of MTS Allstream, agreed that the contractual provisions that were in place, because parties had made those decisions and had assumed some risk and had planned for some of those risks, that those rates -- those

agreements could have run their course. Bearing in mind that there are very few final agreements in place to run their course.

549
So in terms of when that rate might be varied in the future, as I said, I think I said this before, it would depend on whether either of the two parties felt that there was a significant under- or overrecovery of the costs. And as we proposed in the settlement agreement, that there would be opportunity for either party to come back to the Board to seek a variation from the uniform rate in the event that they could demonstrate, assuming there was reliable costing evidence available, a departure from that rate. I'm sorry, does that answer your question?

550
MR. DINGWALL: Essentially. Thank you, those are my questions.

551
MR. KAISER: Thank you, Mr. Dingwall. Were there any other counsel that had questions of this panel?

552
MR. LYLE: Other than Board counsel.

553
MR. KAISER: Go ahead, Mr. Lyle.

554
MR. LYLE: Thank you, Mr. Chair.

555
CROSS-EXAMINATION BY MR. LYLE:

556
MR. LYLE: Panel, I'm going to be directing most of my questions to Mr. Ford. And sir, if I could turn you to your evidence at tab 4, and to the very end of your report, there's a diagram titled: "Space allocation on a typical 40-foot pole."

557
MR. FORD: Yes, appendix 2 to my report. I have it, sir.

558
MR. LYLE: Thank you. Now, just to summarize your evidence with respect to how you calculated the 15.5 percent allocation factor. I understand that you added the communications space and the separation space, and then divided that by 2, on the assumption that there were two communications users. Is that correct?

559
MR. FORD: That's correct. And that would result in an allocation or -- sorry. That would result in an assumption of 2.6 feet for each cable user.

560
MR. LYLE: That's right. Yes. And then you took that 2.6 feet and, as a percentage of the usable space of 16.75 feet, that's what works out to be 15.5 percent; is that correct.

561
MR. FORD: That is correct, sir. The 15 -- the total you just gave being the sum of the 11.5 feet of power space, the 3.25 feet of separation space, and the 2 feet of communications space.

562
MR. LYLE: Now, towards the end of your discussion with Mr. Ruby, you were talking

about the alternate methodology that Mitchell and Yatchew have proposed with respect to sharing equally amongst the users what I'll call the non-dedicated space.

563
MR. FORD: I'm not sure that I was involved in those discussions, but I was certainly here when they took place.

564
MR. LYLE: Well, I think I heard you say, sir, that you weren't sure on what the impact would be.

565
MR. FORD: Oh, I'm sorry, to that extent, yes, I did. You're correct.

566
MR. LYLE: So perhaps you could help me now try to figure out what the impact might be using your assumptions with respect to the layout of the 40-foot pole and the number of customers, and the costs. So, if we were going to try to calculate an allocation factor assuming that all three users, the electricity distributor and the two communications users, are going to pay an equal share of the costs related to the buried space and the clearance space, I take it we'd first add those two numbers and then divide by three?

567
MR. FORD: That would be correct.

568
MR. LYLE: So my calculation is that gets us to 7.75 feet.

569
MR. FORD: 7.75, yes, I get that.

570
MR. LYLE: And then you would add 2.6 feet to that number, would you not? That being the dedicated space?

571
MR. FORD: Correct.

572
MR. LYLE: And that, I understand, gets us to 10.35 feet.

573
MR. FORD: That's correct.

574
MR. LYLE: And as a percentage, then, of the entire 40-foot pole, my number calculates that to be about 25.8 percent? Would you accept that, subject to check?

575
MR. FORD: I was trying to follow along and I did something wrong and -- but yes, I would accept that, subject to check.

576
MR. LYLE: And if I turn you then, sir, back into your report on page 26.

577
MR. FORD: I have it.

578
MR. LYLE: And if we were going to calculate the total indirect costs per pole, based

on this allocation methodology of 25.8, I take it we'd first multiply the number on line H by the 25.8 percent figure?

579

MR. FORD: That would be correct.

580

MR. LYLE: And my calculation is, that turns out to be roughly $21.77?

581

MR. FORD: I will accept that, subject to check. That would -- that would be a revised number in J, indirect costs allocated; correct?

582

MR. LYLE: That's correct.

583

MR. FORD: Yes. I'll accept that $21.77, subject to check.

584

MR. LYLE: And then, subject to check, we would then add the total direct costs of $2.61?

585

MR. FORD: That is correct.

586

MR. LYLE: And that gets us to a number, in K, of $24.38.

587

MR. FORD: The mathematics is certainly correct, subject to check on the earlier $21.77 figure, yes.

588

MR. LYLE: Thank you, sir.

589

Now, let's assume that the Board accepts, to some extent, Mitchell and Yatchew's argument that some of the costs of the shared space should be borne by the telecommunications users.

590

MR. FORD: Well --

591

MR. LYLE: But I'm not a asking you to --

592

MR. FORD: No, but perhaps there's a misunderstanding. Because I want to be very clear, that I am not suggesting that none of the costs of the clearance and buried space should be borne by cable users. The issue -- it is the entire costs of the pole, whatever the height, whatever the grade of that -- or class of that pole is. And we're not doing it on a per-pole basis, we're looking at the entire population of poles in order to do that.

593

And according to -- in my model, what results -- and with my formula, the application of my formula, what results is that the costs of the clearance and buried portions, which are common to all users, are shared among users, based on their usage of the actual usable space. So the contribution to those is 15.5 percent.

594

MR. LYLE: Fair enough, sir. Maybe I'll re-phrase my question.

595
MR. FORD: Sorry, I just -- I was a little concerned -- and from some of the evidence that was provided by other parties -- that perhaps there was a misunderstanding, and I thought I should maybe take that opportunity to make sure that it's clear on the record.

596
MR. LYLE: That's fair. Let me re-frame my question.

597
Let's say the Board decided that the allocation approach that was set out by Mitchell and Yatchew was overly burdensome on telecommunications providers, perhaps because of the issue of the benefits of ownership, perhaps for some other reason. Let's make that assumption. But then let's still say the Board decides that some portion of the allocation formula should relate to the shared space.

598
MR. FORD: You mean, over and above the proportionate share, the usage-based proportionate share of that?

599
MR. LYLE: Yes. Let's hypothesize, then, the Board said 50 percent -- when we're calculating the allocation factor, we're going to allocate 50 percent of the clearance and buried space to the distributor, and 50 percent amongst the two users, the two telecom users.

600
MR. FORD: And the Board could make such a decision, I assume?

601
MR. LYLE: And if the Board made such a decision, can we just go through the same exercise we went through earlier, sir?

602
MR. FORD: I'd be happy to do that.

603
MR. LYLE: In terms of calculations? We'd then have 23.25 feet of shared space, which we'd now be dividing by 4?

604
MR. FORD: Luckily, the shared space, the common space does not change. Yes, that's 23.25 feet.

605
MR. LYLE: And dividing that by 4, sir, my number gets us to 5.8.

606
MR. FORD: I have that number.

607
MR. LYLE: And then, once again, we'd add the 2.6 feet related to the dedicated space?

608
MR. FORD: Yes.

609
MR. LYLE: And that gets us to 8.4?

610
MR. FORD: I have 8.4.

611
MR. LYLE: And as a percentage of the total length of the pole, that's about 21 percent?

612
MR. FORD: And I did the calculation correctly, I guess, because I have 21.

613
MR. LYLE: And then if we turn back once again to page 26, and we apply the allocation factor of 21 percent to line H.

614
MR. FORD: Yes, sir.

615
MR. LYLE: I believe we get about $17.67?

616
MR. FORD: That is correct.

617
MR. LYLE: And then, if we were to add once again line C, the total direct costs of $2.61, we'd come to a total, in line K, of about $20.28?

618
MR. FORD: That is correct. I can confirm that.

619
MR. LYLE: Thank you.

620
MR. FORD: That would be the result of the calculation.

621
MR. LYLE: Now, I handed out to you during the break, Mr. Ford - and Panel, you should have a copy of this - it's an excerpt from the Board's Electricity Distribution Rate Handbook. And towards the bottom of the page, and at the top of the next page, there's a table titled "Table 3.1."

622
MR. FORD: Yes, I have it.

623
MR. LYLE: And I understand your evidence is that, in calculating the weighted average cost of capital, that the deemed equity ratio that you used was 40 percent?

624
MR. FORD: That is correct.

625
MR. LYLE: And the deemed debt ratio was 60 percent?

626
MR. FORD: That is correct.

627
MR. LYLE: And you used an interest rate of 6.9 percent?

628
MR. FORD: That is correct.

629
MR. LYLE: Did those numbers come from the bottom line on that page?

630
MR. FORD: Well, sir, I thought they did until I compared this with my evidence, and I do note that in my evidence I made reference, in the first paragraph on page 25, to using the appropriate -- the deemed capital structure and interest rate for a utility with a rate base in the range of 500 million to 1 billion, and I see this is 250 million to 1 billion. But, certainly, that was my intent, and I'm not sure where the 500 million figure came from. But that was certainly -- my intent was to use the Board's figures, yes.

631
MR. LYLE: Okay. Now, how many utilities in Ontario, to your knowledge, have a rate base over $250 million?

632
MR. FORD: I do not know that. Again, this was information that we had hoped to obtain, but we were not successful in getting a lot of information. I just do not know the answer to that question.

633
MR. LYLE: If I was to suggest to you there's only a handful, you wouldn't have any knowledge that would contradict that?

634
MR. FORD: I really -- I'm sorry, I really couldn't be helpful to you. I don't know the answer to that.

635
MR. LYLE: Now, turning to the return on equity. If you look up towards the top of that two-page document that I gave you, in the second paragraph of the first page --

636
MR. FORD: Yes, sir.

637
MR. LYLE: -- there's a reference to the target return on equity of up to 9.88 percent.

638
MR. FORD: That is correct.

639
MR. LYLE: Now, can you explain to me why you used the 8.5 percent figure?

640
MR. FORD: I indicated that that was the allowed return on equity of 8 point -- that was used by the CRTC in arriving at its decision in telecom decision CRTC 99-3.

641
MR. LYLE: Okay. What I'd like to you undertake to do, sir, is, if using -- you could use the ROE figure of 9.88 percent and then calculate for me a weighted average cost of capital using the deemed equity and debt rations and interest rates that are referred to on the second page of that document for rate a base between 100 and 250, and also for rate base for utilities under 100. Can you do that?

642
MR. FORD: If I could just clarify, then, what you're asking me to do as an undertaking. It is to determine a weighted average cost of capital, using the 9.88 percent target rate of

return
on equity, and applying the capital structure ratios, debt/equity ratios, in the debt ratio
deemed in the last two lines of the table that -- oh, sorry, the top two lines, then, on page
3.8?

643
MR. LYLE: That's correct. And also the interest rates that are referred to in those.

644
MR. FORD: Yes, sorry, including the debt rates, yes.

645
MR. LYLE: Yeah.

646
MR. FORD: And I guess if I could ask for clarification, in terms of -- as I indicated, I did apply or
include in my calculation the payments in lieu of taxes, applying an income tax rate of --
this would be a combined federal and provincial tax rate of 36.6 percent, which I believe
was the combined federal and Ontario income tax rates for non-manufacturing entities in
2003. What income tax rate would you like me to use, sir?

647
MR. LYLE: You could use that number, Mr. Ford.

648
MR. FORD: Thank you.

649
MR. LYLE: And that's just the first half of my undertaking, though. I'd also like you to calculate for
me, using those new debt/equity structures and interest rates, the total annual pole rental
charge, if you were to use the three allocation methodologies that we just talked about
previously, one being yours at 15.5, the other one being at 25.8, and the third one being
at 21.

650
And with that, my undertaking is complete. And we'll mark that as F.2.3.

651
MR. FORD: I'll do my best, sir.

652
UNDERTAKING NO. F.2.3: TO CALCULATE THE WEIGHTED AVERAGE COST OF CAPITAL
USING (A) A DEEMED EQUITY OF 45% AND DEEMED DEBT
RATIO OF 55% WITH AN INTEREST RATE OF 7% AND AN ROE
OF 9.88%; (B) A DEEMED EQUITY OF 50% AND DEEMED DEBT
RATIO OF 50% WITH AN INTEREST RATE OF 7% AND AN ROE
OF 9.88%

653
MR. LYLE: Thank you. Now, I want to take you, sir, to the CEA evidence, and it's tab 3. I believe
this is a report that was prepared by Mr. Wiebe.

654
MR. FORD: My version wasn't tabbed but would that be schedule 3, then, that you're --

655
MR. LYLE: Yes, it's also referred to as schedule 3.

656
MR. FORD: I assumed it would be. Thank you.

657
MR. LYLE: And there's a number of criticisms of your report in this document and I'd just like to get your response to some of those. On page 5, at paragraph 15, there's a statement that the fact that the minimum ground clearance must be measured at the lowest sag point of the cable demonstrates a deficiency in your analysis. The statement goes on to say that you do not appear to recognize this issue and you seek to incorrectly apply clearance figures at the pole instead of in mid-span. Can you comment on that statement?

658
MR. FORD: I can only comment that the assumption I made with respect to the typical pole was submitted by the MEA, predecessor to the EDA, in the negotiation and eventual application process that resulted in telecom decision 99-13. It has been attached as part of, I believe it's appendix E to the draft MEARIE agreement, and it is also attached or included as part of Hamilton Hydro's response to interrogatory responses that was filed by the EDA last week.

659
So I certainly do not put myself forward as an expert on poles, and I merely accepted what is regarded by the industry, apparently, as a typical joint-use distribution pole for purposes of this proceeding.

660
MR. LYLE: And if I turn you to page 6 of that report, there's a reference in brackets, starting on the second line. It says:

661
"(The amount of power pole space varies quite considerably and is certainly not fixed at the 11.5 feet alleged in the Ford report.)"

662
MR. FORD: Well, I agree, sir, and that certainly has been my observation. And it's amazing when you get involved in a proceeding like this how many poles you look at as you drive across the country, especially in Northern Ontario when there isn't a lot else to look at. But I would agree, there certainly is a wide variance. And again, what we're talking about is an average, is a typical pole, and I would refer you to the same sources of information. I'm not a pole expert. I accepted what the industry appears to believe is typical.

663
MR. LYLE: And then if I could turn you to page 7, paragraph 21. There's a statement there that:

664
"Power poles are not typically 40 feet in height. In fact, there's more 35-foot poles than there are 40-foot poles."

665
What's your comment on that?

666
MR. FORD: I, in fact, did a calculation of the weighted average of the height of those poles. And one

has to make an assumption that poles 25 or under are 25 feet, and poles 65 feet or over are 65 feet, in order to arrive at a precise number. And I did that, and I came up with 40.05 feet. And I asked in an interrogatory, or through the CCTA, a interrogatory to CEA, and they confirmed that was the case, but referred me to -- or referred us to additional data which they provided in this proceeding. And in a response to the interrogatory, which is appendix B to their interrogatory responses, the weighted average pole height, based on the new data, is just something under 40 feet. 39 point some feet. If you can give me a second, I can probably access that information to put on the record.

667

MR. LYLE: Sure.

668

MR. FORD: Yes, what I'm making reference to here, just for clarity, is in appendix B to CEA's responses to interrogatories pursuant to the Board's order number 3. And my first reference to the weighted average height of the poles on page 7 can be found in the response to CCTA Interrogatory No. 7, where we asked to confirm that the weighted average pole height for all poles included in the table on page 7 is 40.05 feet. The response was confirmed.

669

"However, this weighted average does not recognize the diversity of pole lengths in use across Canada.
See appendix B."

670

And appendix B, in the first page, provides a summary of additional data. And if one uses the same assumptions in terms of a poles 25 feet and under being 25 feet and poles 65 feet and over being 65 feet, one arrives at a weighted average of -- and I can't put my hands on the result of the calculation, I'm sorry. I thought I was going to be able to give that. But I can give that as an undertaking for sure. It's on a separate calculation that I just don't appear to have here.

671

MR. LYLE: So perhaps, then, we will make that Undertaking F.2.4, calculation of the weighted average of pole heights based on updated evidence.

672

MR. FORD: Based on the CEA's evidence contained on page 1 of appendix B. Yes, I'll be happy to do that, sir.

673

UNDERTAKING NO. F.2.4: TO PROVIDE A CALCULATION OF THE WEIGHTED AVERAGE
OF POLE HEIGHTS BASED ON THE CEA'S RESPONSES TO
INTERROGATORIES CONTINUED ON PAGE 1 OF APPENDIX B

674

MR. LYLE: Thank you.

675

Finally, I just have one question for you, Ms. Assheton-Smith. And if I could refer you to Ms. Kravtin and Mr. Glist's report.

676

This is a quote that Ms. Friedman put on the record yesterday. It's at the bottom of page 16, and continuing on to 17. I'll just read it for you. It states:

677
"Regulatory intervention is needed to help ensure the negotiation process produces an outcome that
effectively and efficiently balances the interests of the two parties and at the same time promotes the
public policy goals of a competitive telecommunications market and the widespread deployment of
advanced, information-age services and technologies."

678
And my question for you is: This Board is an energy regulator. It has objectives in its statute which are to
guide it in its decision-making. Those include protecting the interests of consumers with respect to
electricity prices. They include ensuring a financially-viable electricity industry. Can you explain for me
why these telecommunications public policy goals are something that the Board should be considering as
it makes its decision?

679
MS. ASSHETON-SMITH: I'll acknowledge that the Board as a creature of statute has to be guided
by its statutory mandate, and we certainly don't take issue with that.

680
I think, as Mr. Glist said yesterday, that these outcomes are happy benefits that result from the Board
actually exercising its statutory mandate to establish just and reasonable access conditions to power poles
in Ontario.

681
I would not suggest that the Board needs to look beyond its own statutory mandate in order to make its
determination in this matter. But I would agree with Mr. Glist and Ms. Kravtin's report, that these are
public -- general public policy outcomes that would result from access to power poles in Ontario. But
they're not a necessary input, by any means. And we certainly didn't mean to suggest that the Board
should look beyond its own statutory mandate to make a decision.

682
MR. LYLE: Thank you, Mr. Chair. Those are all my questions.

683
MR. KAISER: Thank you, Mr. Lyle.

684
[The Board confers]

685
QUESTIONS FROM THE BOARD:

686
MS. CHAPLIN: Thank you.

687
Just following up, to start with, Mr. Ford, on the undertaking you're giving regarding the weighted
average of the pole height. Would I be correct in assuming that what would also matter is, sort of, the
distribution of attachments across pole heights, if we're trying to find a typical pole with attachments?

688
MR. FORD: Well, as I indicated yesterday, I believe it was in a discussion I was having with Mr.
Ruby, the -- what we're concerned with is, primarily, the average number of attachments

to poles which also have cable attachments, because that is what is important in deriving a rate for cable users.

689

MS. CHAPLIN: Right. But I guess what I'm trying to find out is that, even if the average -- weighted average pole height is 40 feet, if most cable and telecom attachments are -- if the distribution of those types of attachments is not equal across pole heights, then the representative pole that has a cable and telecommunications attachments might be different than that 39 feet, which was you gave in your testimony?

690

MR. FORD: I'm not sure that there is any relationship between communications users and pole heights.

691

MS. CHAPLIN: Okay.

692

MR. FORD: And, as I say, I'm not a pole expert but I would certainly turn to -- and check to see whether either of our industry representatives are aware of pole heights that vary with the number of attachments, i.e., does communications space vary, I guess, would be another way of trying to get around -- trying to get what you're asking about.

693

MR. GREENHAM: I wouldn't be able to add much. We're on 65-foot poles. We're on 35-foot poles. We're on 45-foot poles. We don't shy away from any particular pole for any particular reason.

694

MS. CHAPLIN: Okay. Thank you.

695

And I guess this question is for Mr. Glist and Ms. Kravtin, and probably also for Mr. Ford. I understand the CCTA application is for a uniform rate. Perhaps, in the best of all possible worlds, would your preference be for a formula rather than a uniform rate? Or do you believe a uniform rate is more appropriate?

696

MR. GLIST: In my view, a uniform rate based upon a proportional-use formula is ideal, in that it's providing two things: It provides a savings on transactional costs, and it provides an approach for parties to potentially update it privately, based on a known formula from a regulatory body.

697

MS. CHAPLIN: So, in a sense, a uniform rate that's based on an explicit formula.

698

MR. GLIST: Yes.

699

MS. CHAPLIN: And that would provide guidance to them?

700

MR. GLIST: Yes. Because the benefits that have been recognized by sister regulators of a clear

formula, with clear input data, is that it actually facilitates updates and negotiations outside of formal regulatory processes, and saves a lot of transaction costs on everyone involved.

701
MS. CHAPLIN: Okay. And Mr. Ford, in your evidence -- let me find the page -- on page 26, where you have the table of figures --

702
MR. FORD: I have it.

703
MS. CHAPLIN: Okay. And just in the paragraph above that table, you explain that you expected that further data would be available to enable the Board to determine a rental charge based on more current and representative data. Now, you've explained how that's not been available. And as I understand it, you've taken some comfort, if I may characterize it that way, from the Hamilton data.

704
Are you comfortable that this data, which is based on one company, is representative?

705
MR. FORD: I would be a lot more satisfied that it was representative if it was based on more data, but at this point, I don't have any reason to say that it's not representative. So -- it's a difficult question to answer, as I'm sure you appreciate.

706
But, I mean, the fact that two very different-sized utilities came up with numbers, one based in 1997, one based in probably 2003 data, and there were about four times difference in terms of the size of their pole population, they came up with very similar numbers. And, after all, what we are talking about here are poles. I mean, it is not something where the technology changes over time. It's something that is depreciated very slowly, at a rate, I think we've discussed, usually of 4 percent per year. So they are long-life assets.

707
I don't think the numbers are going to be significantly different from one utility to another. So given that, yes, with time -- if they were installed at a different time, there could be subtle differences, but I would think - we're looking at a broad range of utilities - that those specific numbers could probably be useful.

708
And I would also point out that in the proceeding leading up to decision 99-3, that was the data that was offered by the industry. So, whether it -- I would be very surprised if the industry were putting forward data that was not representative.

709
MS. CHAPLIN: And I have one final question. There was some discussion yesterday regarding whether -- from, I believe, it's questions from EDA -- regarding whether from a societal perspective, it might be preferable for the electric utilities to build poles that took into account, in advance, what the potential needs might be of cable and telecom providers. Do you recall that discussion at all? I think it might have been Ms. Kravtin.

710

MS. KRAVTIN: Yes.

711

MS. CHAPLIN: If that were to be the case, I mean, I think what you said was, you hadn't been given -- I think maybe it must have been Ms. Assheton-Smith, you said you hadn't actually been given that opportunity. If, for example the LDCs were to proceed on that basis, do you feel that that would have any impact on what the appropriate charge for your members would be?

712

MS. ASSHETON-SMITH: I'll give you my answer and I'll hand it over to Patricia -- Ms. Kravtin to add her thoughts. But I think the reality is that we're -- our plant is on over 300,000 poles in Ontario already which haven't been built to take into account our needs or expectations. And the reality is, I think it's shown all the way through the evidence, that the preference of the LDCs has not been to involve cable in their planning. And I haven't seen any indication on the record that this hypothetical approach where they would consult and we would have input from the outset is something that they would contemplate seriously or would want to contemplate. So it's very difficult to answer in the absence of knowing how that would actually take place, and whether it would work. But perhaps I can pass that on to --

713

MS. KRAVTIN: I was just going to comment that I think what came out in the cross-examination yesterday and today is that, through the LDCs' joint-use agreements with Bell Canada, that, in fact, their poles are designed to include communications space.

So that I don't think there really would be any sort of change that's contemplated for cable. And to the extent there are changes required to accommodate cable, those are applied through the make-ready charges that the cable industry pays. So I think it was raised in cross-examination in a bit of a hypothetical sense when you look at what is really happening.

714

MS. CHAPLIN: Right, and I guess what I'm trying to do is, I understand that you -- it's my understanding is that your view of the hypothetical is that it's very far-fetched, I suppose that's the word. But if that there were to be the case in the future for poles where -- future poles, in a sense, if they were to be overbuilt, let's say, as a characterization, do you feel that that would have an impact on what the appropriate costing methodology would be for deriving a rate? For deriving an attachment fee?

715

MS. ASSHETON-SMITH: I can't comment on that unless one of my colleagues can.

716

MR. FORD: Perhaps I could help a little bit here, and I think we're all fumbling a little bit. But if, for example, some of the costs that are now paid as make-ready costs were, in fact, avoided because of the fact that cable's very specific needs were taken into account through a planning process and the utility incurred specific costs in order to do that, in other words, it would be a trade-off between the utility making the expenditure and therefore including it in the embedded cost of the pole as opposed to the utility making the expenditure at the time a permit is made, and then flowing that cost through as an up-front charge, a one-time charge, then that would be reflected in the embedded cost of

the pole, and would therefore be recoverable. And I think that could be captured in that way. It would be in the nature then, I would say, of a trade-off between including it as an ongoing charge and including a -- recurring charge, and including it as an up-front charge.

717
MS. CHAPLIN: Thank you very much. Those are my questions.

718
MR. SOMMERVILLE: I have no questions.

719
MR. KAISER: Mr. Ford, can I turn you to page 21 in your evidence. We're all familiar with this by now. We know that the parties agree on the recovery of the incremental costs or indirect costs and what we're arguing about is the split or allocation of the common costs. And you've explained how you gave us the 15.5 percent, and Mr. Lyle has taken you through some examples that yield 21 percent and 25.8 percent. Your approach, as I understand it, and this is reflected best in the diagram at the end of your evidence, is that there are discrete pieces of territory on the pole, if I can put it, that are used by the cable companies.

720
MR. FORD: I think that's a fair statement, sir.

721
MR. KAISER: Now, we heard some evidence this morning about, and this is new to me, so you'll have to help me, about overlashing, which -- I think that's what Mr. Ruby called it -- which is essentially a concept where everyone was hanging on the same bolt. Are you familiar with that?

722
MR. FORD: I don't -- I would turn to my industry colleagues, but I don't believe it's all one bolt. I think it is making use, perhaps, of an existing strand but there could well be two strands bolted to the communications space.

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MR. KAISER: Maybe I'll come to you, Mr. Armstrong.

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MR. FORD: So perhaps we'll let --

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MR. ARMSTRONG: Mr. Chairman, and I'll let Mr. Greenham jump in at any time because he has better technical knowledge than I do. Through the negotiation of joint-use agreements with LDCs, we often find that there's 2 feet of communication -- we refer to 2 feet of communications space on any pole. That yields three places, three spots for communications companies to put their equipment or hang their wires. Often, the way that we discuss it through the negotiations is that the bottom space is reserved for Bell Canada, the middle space is reserved for the cable television industry, and the top space is reserved for the LDC's affiliate telecom carrier.

726
Clearly there are more players in the market than just those three, and what often happens or what can happen is, Allstream might approach Bell. Allstream might approach any one of the three and

say to one
of those three: Can I overlash my fiber to your strand? What that has the effect of doing is ensuring that
that -- or hopefully ensuring, anyway, that that pole doesn't get boxed in by having telecommunications
strands on two sides of the pole, it's only on one side of the pole. That's one way in which overlashing
occurs in the industry.

727
A second way in which it occurs is, the cable company over the years has consistently deployed more
fiber in its network in order to increase the bandwidth and deliver more services to the customers. And so
what we will do is, we will try and drive fiber closer to the customer. So we might already have a strand
and a piece of distribution cable up on a hydro pole, but then we will come along and overlash our own
fiber to our own strand at a later date some time.

728
MR. KAISER: Now, you mentioned this morning that the LDC overlashed.

729
MR. GREENHAM: Yes, I mentioned that this morning.

730
MR. KAISER: And why are they doing that?

731
MR. GREENHAM: They are doing that -- currently we are working on an agreement with Ottawa
Telecom, or the LDC arm of the Ottawa Hydro, for them to overlash to our facilities in the Cornwall area, so that they can get to a customer of theirs. We
have done exchanges with Kingston Hydro and their telecom arm so that they can overlash fiber to our facilities to get, again, to their customers. And we've
also done the same agreements and exchanges for use of space with Ontario Hydro or Hydro One telecom.

732
MR. KAISER: But I guess my question is this: To the extent that -- well, is this overlashing concept
becoming more prevalent?

733
MR. GREENHAM: Actually it's an older -- it's been around for years and years and years. It was
originally part of the original placement of Bell placing cable for us on their strand, and that was under the partial systems agreement. And then we've since gotten rid of and bought back all of that and now it's still in place, but it's now
under a support structure agreement with Bell Canada. So that there's quite a bit
of history to overlashing facilities.

734
Typically, and John had a very good point about lashing to existing facilities that are already owned by
the cable company to get fiber closer to the customer, and the instance where the LDCs are overlashing
to us or where we would try to overlash to Bell, typically are to avoid make-ready costs. On substandard
poles where clearances are compromised and there's an existing strand on that pole, instead of paying the
make-ready costs to upgrade the pole, you can make use of the existing strand that's there to avoid that
cost.

735

MR. KAISER: All right. Now, you mentioned, I think it was Mr. Armstrong, that you divide this communications space into three parts.

736
MR. ARMSTRONG: Correct.

737
MR. KAISER: What happens if the hydro company is there, the telephone company is there, you're there, and what happens if MTS Allstream comes along? Where do they fit into this equation?

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MR. ARMSTRONG: That's where overlashing comes into play. And they could overlash, you know, depending on a permit approval, they could overlash to any one of those three, essentially.

739
MR. GREENHAM: If I could add. CSA standards, everybody's been quoting the 1-feet separation, and that applies in a lot of cases. But there are other cases where you cannot bend the rules, but the rules allow for separation of 8 inches; it allows for placement on the back side of the pole so that you could actually have three attachers on the front side of the pole and three attachers on the back side to have pole.

740
Now, that's a practice that's frowned upon by the LDCs because it's very difficult to change that pole in the case of an emergency, because it's very difficult to raise a new pole between existing facilities.

741
In some cases, based on design -- or future plans for that pole line, the LDC will actually direct you to go to the back side of the pole, because in five years or two years they plan on placing that pole line behind the existing pole line so it will make it easier for you to transfer your services and they won't have to top the pole to be able to do that.

742
So there's so many variations of what happens to a pole and what's connected to a pole. It's very difficult for everybody here to generalize all of the concepts and all of the actual placement and uses in that communication space on a pole.

743
MR. KAISER: Now, Mr. Ford, you've mentioned, and this is referenced on page 21, that -- you took this really from the CRTC, that the calculation of 15.5 was really based upon a notion that there were two attachers.

744
MR. FORD: That is correct.

745
MR. KAISER: Now, what happens if we have three? What happens, as this industry opens, we have competing telecommunication companies and they want in? What does that do to your rate formula, if anything?

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MR. FORD: Well, it doesn't change the formula, sir. That's -- the formula is capable

of adjusting for
that. If the --

747
MR. KAISER: Let me just interrupt, then. Is that what you would propose, that if there was a third
attacher, that everyone's rate would ratchet down, or are you suggesting the third guy
gets a free ride or what?

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MR. FORD: No. No, the -- certainly it's not my -- and I don't think anybody would suggest that the
third one should get a free ride. What I think the approach is certainly very capable of
dealing with, the addition -- the addition of more users of the communication space, and
if that number were to be -- to become, on average, greater than two, it would result in an
overrecovery of the costs. The rate would be applied to additional users and therefore it
would be appropriate to adjust the calculation to reflect that.

749
Now, it's my guess that all parties, once an approach is established, would be prepared to recognize that if
the number of attachments, the number of users, increased significantly beyond two, on average, that it
would be appropriate to adjust the rate.

750
MR. GREENHAM: If I may. In most of the agreements that are being negotiated, a clause in that
deals with doing a system audit of all the poles in this -- so that you can make
sure that your permits are up to date. And at that time they record all of the users
of the pole. So the agreements would allow for you to record how many users
and what your average number of users are on a pole, to help facilitate -- you know, identifying where there's an overcompensation.

751
MR. KAISER: I understand that. But I want to get your position. Your rate, as you've calculated it,
coming from the 15.5, is based upon two.

752
MR. FORD: Yes.

753
MR. KAISER: There's a third party in this room, in this case, and they're looking for a rate, too. Now, do
you have any views as to how that rate should be handled? Whether there's an adjustment
to your rate, what their rate should be? I mean, there are a number of scenarios. We
could do nothing until somebody decided to adjust it, or we could deal with it now. But it
is going to be a live issue. They're sitting out there.

754
MR. FORD: Well, it certainly -- I think it was agreed, and I may be speaking a little bit out of turn,
but in terms of the -- in terms of the settlement agreement, I believe it was indicated that
it should -- the rates should apply to all parties. So I don't think there's any indication that
anyone would ever be a user of a pole without paying a charge for that. I mean, through
the permitting process, users of poles are identified --

755

MR. KAISER: No, I understand.

756

MR. FORD: -- to the utility. And what I'm saying is that, over time, if a number of attachments, number of users, on average, increased such that two was no longer an appropriate number and that it was resulting in an overrecovery, well, the utility basically are getting more attach -- more revenue than the cost model would indicate was appropriate, then I think there would be pressure to either adjust the rate downward through, perhaps, a portion of the agreement, or parties could come to the Board and say, Certainly in this jurisdiction, the assumption of two users is no longer appropriate; the average is three users of the communications space, and that therefore a portion of the cost should, therefore, be reduced, the rates should therefore come down.

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MR. KAISER: Would you agree with this: In a case where Videotron or Allstream attached to a pole, in all likelihood, they're going to be the third one; in all likelihood, there's already going to be two of you there.

758

MR. FORD: Okay.

759

MR. KAISER: And we're here to talk about rates, not just with respect to the cable companies but with respect to the competitive telecoms. So do you have any position as to what the rate should be in those cases where there's not two but there's three, i.e., in those cases where a competing telecom comes along?

760

MR. FORD: Well, I think the rate should apply the same to each user of the communications space, and I'm saying that the formula that I have put forward, I believe, is capable of taking care of that. And if -- we're not pricing pole by pole here. I mean, we're looking at the average.

761

MR. KAISER: No, I understand.

762

MR. FORD: And if the average number -- if two is no longer an appropriate number for the average number of users of the communications space, you know, if 50 percent of the poles have two and 50 percent of the poles have three, then I would think it would be appropriate to use two and a half. In other words, I think as the industry evolves, and over time, the approach is quite capable of dealing with that.

763

MR. KAISER: All right. So let me understand you.

764

If I understand your answer, you would say, let's do nothing now, even though the LDC may be overearning in the short run. When we get enough of these competing telco attachments, we'll average it down. Is that your position?

765

MR. FORD: I think in a nutshell, yes. I certainly -- I certainly think that cost recovery -- appropriate cost allocation/cost recovery are the principles, but with a practical bent to it. So that you don't want to go changing the rate every second Thursday because that's when permits are issued, but at the same time, trying to arrive at a rate that can be applied for a reasonable period of time to minimize regulatory burden, to minimize transaction costs and that sort of thing. But certainly the intent is to reflect reality.

766
MS. ASSHETON-SMITH: Could I just add on to that.

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Certainly, if the Board, in reviewing the evidence before it in this proceeding, is of the view, based on the evidence, that it appears the assumption of two users per pole is conservative, I don't think the Board is precluded from adapting its approach to Mr. Ford's formula to reflect what it views as the evidence. So if it wants to up that to 2.5, I would suggest that that is within your prerogative to do so, if that's what you consider the evidence supports.

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MR. KAISER: Mr. Glist, any experience in the U.S. on this?

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MR. GLIST: The closest experience in the U.S. in terms of counting users, the FCC has, for example, the presumption that in rural areas there are three users, including two telecom users. They also reached the conclusion that you wouldn't redo the formula every second Thursday, but you would track, over time, and the industries could come back for reevaluation, or they could contract for more granular rates.

770
So there could be an agreement that said, actually, when the next telecom user goes on, everybody rachets down their rate a little bit. It's some kind of self-adjusting that could be contracted for if there were that kind of guidance from the regulator.

771
MR. KAISER: Mr. O'Brien, you negotiated an agreement, as I recall, between the OCTA and I think it was Hydro One.

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MR. O'BRIEN: That's correct.

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MR. KAISER: And how many poles were involved in that in round numbers.

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MR. O'BRIEN: Roughly 200,000.

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MR. KAISER: All across the province?

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MR. O'BRIEN: Yes.

777
MR. KAISER: Is there a standard rate all across the province?

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MR. O'BRIEN: Yes.

779
MR. KAISER: And this is one of these contracts, presumably, that has the retroactivity clause?

780
MR. O'BRIEN: No. No, this was a fixed rate for, actually, a four-year period which expires at the end of this year.

781
MR. KAISER: And one other question, Mr. Ford. You mentioned in your evidence, you considered it a factor the fact that there was increasing competition in this industry, convergence if you will, with the LDCs going into telecommunications and the cable companies now competing with the phone companies. To the extent -- and think there's some interrogatory on this that says there may be 22 of these electricity companies that are now in the communication business. How is that relevant to this proceeding?

782
MR. FORD: Only, sir, that I believe that the approach should be cost-based, in terms of developing an appropriate user charge, and that it should apply uniformly to all users of the space.

783
MR. KAISER: One of the questions before, so that you know, is whether we should even regulate in this area at all. Is the degree of competition to or the extent to which electric companies going into the communications business relevant to that question? If your colleagues wanted to answer this, that's fine.

784
MS. KRAVTIN: I certainly would believe that to be the case. And that's part of the consideration that we raised in our report, that the issue of convergence does bring telecom into consideration by this Board, because it deals directly with affiliate relationships between the LDC and its telecom affiliate. It also, obviously, provides the LDC with an increased incentive and opportunity to leverage its monopoly power in the distribution market into the competitive competition market -- the telecommunications market. So those factors we believe to be relevant to this Board.

785
MR. KAISER: And one final question on that point. It's, I think, a matter of public record that some of these companies, Toronto Hydro's one, they have a subsidiary, Toronto Hydro telecom, that's substantially involved in the commercial side of the telecommunication business, particularly in downtown Toronto. Let's suppose they want attachment, should they pay? Should they pay the same rate as you pay?

786
MS. KRAVTIN: Yes, they should.

787
MR. KAISER: I'm talking about a telecom subsidiary of the hydro company.

788
MS. ASSHETON-SMITH: Yes. Under our settlement agreement, we agreed that it would apply to telecommunications carriers, as defined under the Telecommunications Act, and the telecom affiliates of the hydro companies are actually regulated telecommunications carriers under the CRTC.

789
MR. KAISER: So the affiliates have agreed to that?

790
MS. ASSHETON-SMITH: I don't remember them being in the room, but their parent companies were in the room for the settlement agreement.

791
MR. KAISER: Right, and do they understand that concept that they're somehow bound by your settlement agreement that they're going to be required to pay if they seek a separate attachment?

792
MS. ASSHETON-SMITH: I can't speak for them on that point.

793
MR. KAISER: Can you speak to that, Mr. Brett?

794
MR. BRETT: I don't think I can speak for them either, Mr. Chairman. I mean Toronto Hydro and Hydro One were in the room but not everybody was in the room.

795
MS. DJURDJEVIC: Mr. Chair, speaking for Toronto Hydro, I was present, and we're all well aware, the affiliate, the parent company, and the regulated company, everybody's aware of the settlement agreement, and takes no issue.

796
MR. KAISER: So I take it that you agree that Toronto Hydro Telecom should pay the same as the cable companies would pay.

797
MS. DJURDJEVIC: If that's the course the Board chooses to pursue, then yes, we would all be bound.

798
MR. KAISER: What I'm trying to understand is whether you already agreed to that as part of the settlement agreement.

799
MR. BRETT: I don't think we've agreed to a rate but we have agreed to the principle.

800
MR. KAISER: You have agreed to the principle. Right.

801
MS. KRAVTIN: Mr. Chair, if I may. I think the point you make is very important that certainly, at a minimum, the affiliate should agree to pay the same rate. But I also want to raise the point that it doesn't justify an abusive or high rate just because the affiliate also is bound by that rate, because obviously it's the same company. It's going from one division to the other. And we've seen this as a pattern through monopoly companies where they set a high rate and say, Well, our affiliate is paying it. But it's going into their profits of the larger corporation.

802
So if anything, that's an additional reason why the rate must be set at reasonable cost-based levels, because it will affect the different corporate entities differently.

803
MR. KAISER: Thank you very much. Thank you, panel.

804
MS. PANTUSA: Mr. Chair, if I may interrupt, Hydro One. We just want to confirm that Hydro One Networks does charge Hydro One Telecom the same rate as it does the other cable companies.

805
MR. KAISER: Thank you for clarifying that.

806
Mr. Lyle?

807
MR. LYLE: I'm not sure if Mr. Brett has any redirect at this time?

808
MR. BRETT: No, I do not, Mr. Chairman, Panel. Thank you.

809
MR. KAISER: Thank you. Could this panel be excused, Mr. Lyle?

810
MR. LYLE: Yes, Mr. Chair.

811
MR. KAISER: Thank you very much for coming all this way. You've been of great assistance to the Board.

812
Mr. Ruby, do you have your witness?

813
MR. RUBY: I do, and perhaps -- I know there's not much time, but it may be a good time, if the Panel's inclined, to take a five-minute break while we switch over.

814
MR. LYLE: I think we better keep it to 5 minutes, Mr. Chair. We're quite tight for time, and Mr. Wiebe has to leave right at 5 o'clock to catch a plane.

815
MR. KAISER: All right.

816
--- Recess taken at 3:30 p.m.

817
--- On resuming at 3:36 p.m.

818
MR. KAISER: Please be seated.

819
Mr. Ruby.

820
PRELIMINARY MATTERS:

821
MR. RUBY: Thank you, sir. Just as a preliminary matter, Mr. Wiebe's curriculum vitae was pre-filed with the Board but I understand from Mr. Lyle that it doesn't actually have an exhibit number. So perhaps we can take care of that.

822

MR. KAISER: Mr. Lyle.

823

MR. LYLE: Yes, we can mark it, sir, as Exhibit E.2.1.

824

EXHIBIT NO. E.2.1: CURRICULUM VITAE OF MR. ERNST WIEBE

825

MR. KAISER: Thank you.

826

MR. RUBY: Thank you. Thank you very much, Mr. Chair and Panel. I would like to introduce Mr. Ernst Wiebe of Manitoba Hydro. As Mr. Lyle pointed out, unfortunately he's off to Chicago this evening on business so I will try and be as brief as I can so he can get to the airport on time.

827

Mr. Wiebe, just to get one thing out of the way, does --

828

MR. KAISER: Just before we proceed, I think we'll swear the witness. Even though he's going to be here for a short time.

829

CEA PANEL 1 - WIEBE:

830

E.WIEBE; Sworn.

831

EXAMINATION BY MR. RUBY:

832

MR. RUBY: Thank you. Mr. Wiebe, does Manitoba Hydro, or for that matter do you, have a commercial interest in the outcome of this proceeding?

833

MR. WIEBE: No, we don't, we have no poles here.

834

MR. RUBY: And does Manitoba Hydro own any poles in Ontario?

835

MR. WIEBE: No, it owns no poles in Ontario.

836

MR. RUBY: Mr. Wiebe, how long have you been with Manitoba Hydro?

837

MR. WIEBE: I've been with Manitoba Hydro since 1974.

838

MR. RUBY: And I understand that you have responsibility for Manitoba Hydro for the joint use of power poles?

839

MR. WIEBE: Yes, I have responsibility for that.

840

MR. RUBY: And just to cut to the chase, that includes both the business side and the engineering side?

841
MR. WIEBE: Yes.

842
MR. RUBY: Okay. We've heard in the last few days a lot of talk about a particular CSA standard. Are you involved with the development of that standard?

843
MR. WIEBE: Yes, I'm the current chair of the technical committee writing that standard.

844
MR. RUBY: How long have you been involved in the development of that standard?

845
MR. WIEBE: I've been involved in the development of that standard since 1989.

846
MR. RUBY: And does that standard apply both to communications facilities and electricity facilities?

847
MR. WIEBE: Yes, it does.

848
MR. RUBY: And you're also, I understand, a member of the CEA's joint-use task group.

849
MR. WIEBE: Yes, I am.

850
MR. RUBY: And how long have you been doing that?

851
MR. WIEBE: My earliest record of that is 1997.

852
MR. RUBY: Thank you. And Mr. Wiebe, do you adopt the CEA evidence that's been filed in this proceeding with one important exception, the numeric data that's been put in for provinces other than Manitoba?

853
MR. WIEBE: Yes, with one small clarification.

854
MR. RUBY: Sure. Why don't we do that right now, then. Which clarification?

855
MR. WIEBE: On page 14.

856
MR. RUBY: Sorry, page 14. This is of the CEA evidence?

857
MR. WIEBE: CEA evidence, paragraph 36, item A.

858
MR. RUBY: Yes.

859
MR. WIEBE: The words, "during the life of the pole," I would write, "during the amortization period of the pole."

860
MR. RUBY: Thank you. Now, again, let's, if we can, get one more clarification out of the way. Mr. Wiebe, do you have the MTS answers to interrogatories with you?

861
MR. WIEBE: Yes, I do.

862
MR. RUBY: Can you take a look at the answer given by MTS to Energy Probe Interrogatory No. 1.

863
MR. WIEBE: I have it.

864
MR. RUBY: Is it accurate?

865
MR. WIEBE: No, it isn't.

866
MR. RUBY: Can you tell the Board why?

867
MR. WIEBE: MTS Allstream's response says that:

868
"... incremental capital costs that would result from MTS Allstream's attachment to Manitoba Hydro's joint-use poles --" sorry.

869
It's the second paragraph in that answer:

870
"... incremental capital costs that result from MTS Allstream's attachment to Manitoba Hydro's joint-use poles are paid by MTS Allstream directly to hydro at the time of construction. These make-ready costs normally involve payment for an extra 5 feet of wood pole required to provide a 2-foot communications space plus a separation space of 3 feet."

871
I would like to say that incremental costs are paid only on poles larger than 40 feet, and not, as this suggests, on all poles.

872
MR. RUBY: All right. And if I can take you to one more thing in the CEA evidence. Page 13 of the CEA evidence, there's heading titled: "Pole ownership versus tenancy."

873
MR. WIEBE: Yes.

874
MR. RUBY: I don't want to take the Board's time taking you through it, but there are a number of items listed there. Do those items all accurately reflect your experience?

875
MR. WIEBE: Yes, they do.

876
MR. RUBY: Okay. Mr. Wiebe, I'm going to take you to some specific issues that have been a little bit in dispute in the evidence in the last couple of days. In your experience, are there typically two attachments per joint-use pole?

877
MR. WIEBE: My experience says that there are not typically two attachments per joint-use pole.

878
MR. RUBY: How many do you say there are?

879
MR. WIEBE: They range widely, but the averages, for example, in Manitoba, is 1.47 attachments per joint-use pole. And in dialogue with my colleagues over the years, I've known that even in Ontario this number is, the average number of attachments per pole is much lower than two. I recall one LDC at 1.37.

880
MR. RUBY: If you -- maybe this will help you. If you look at the CEA's evidence, now, this is at -- excuse me, answers to interrogatory. There's a full volume under tab B, and the Board's already been taken to this. There's a rather lengthy spreadsheet. Do you see it there?

881
MR. WIEBE: Yes.

882
MR. RUBY: And under C it deals with utility poles, and as you flip the pages it has one utility after another across the country.

883
MR. WIEBE: Yes.

884
MR. RUBY: Is there any pattern you can detect in the number of attachments?

885
MR. WIEBE: No, there's no pattern. Even if you look at Ontario only, you don't see a pattern.

886
MR. RUBY: Now, Mr. Ford has said in his evidence, and this is at page 2 of his evidence, but he's also said it again just a few minutes ago, that you can fit, and some of the other earlier panel has said this as well, that you can fit three attachments in the -- some people called it two feet, some people called it 600 millimetre, but in that 600-millimetre space. Is that correct?

887
MR. WIEBE: At the pole, it might be. In practice, it's unlikely.

888
MR. RUBY: Can you explain why?

889
MR. WIEBE: The 600 millimetres is considered to be attachment space, but what one of the things that are often neglected is the communications sag that also has to be accounted for in the pole. And this sag has a direct impact on the amount of space used, and it's unlikely that three attachments can sag within the 600 millimetres. In fact, if you attach at the bottom of the 600 millimetre space, you have to sag outside that 600 millimetres.

890
MR. RUBY: Thank you.

891
In fact, in a 600-millimetre space, if you take into account the sag you just discussed, can

you typically fit
two communications attachments in that 600-millimetre space?

892
MR. WIEBE: Typically, no. You can in rare circumstances, but typically you would require more than
600 millimetres to attach two communications conductors.

893
MR. RUBY: So when we all drive around and see two attachments on a pole, how is that happening?

894
MR. WIEBE: They're using more than 600 millimetres on the pole.

895
MR. RUBY: Now, in your experience, have the types of communications facilities mounted on poles
changed over the last ten years?

896
MR. WIEBE: The types of attachments have changed. The fiber in the last ten years has been a new
player. There's also been attachments, battery banks, to support the fiber as well as the
equipment that is attached, has been added in recent memory. In addition to the co-ax
and the copper wire that have been traditionally been used.

897
MR. RUBY: And the battery banks you just mentioned, how big do they get in your experience?

898
MR. WIEBE: That's been an issue. In Manitoba, for example, we have finally agreed between the user
-- the communications users and ourselves that they will not install a box larger than
600-by-600-by 300, in millimetres. Their initial hope was to increase that to use a
900-by-900-by-600 box.

899
MR. RUBY: Okay. And we were just talking about the communications space, and you said it's not
necessarily 600 millimetres. Where do you measure it from? And feel free, if you want,
to draw a diagram.

900
MR. WIEBE: I will try to explain myself.

901
If you assume that the conductor, the bottom communications conductor, provides exactly the minimum
ground clearance required, then the pole must be enlarged, made higher, by that amount. The 600-millimetre space can be -- one communications conductor can often be accommodated within a 600-millimetre space. However, we know that two, and I hear in Ontario three users of that are required,
and traditionally and by convention they have used the separation of 1 foot.

902
If you use that as a 600-millimetre space at the pole, then you have to account for the communications
sag that is evident here. And when you attach even two, we have sag charts that Manitoba Hydro uses
from its telecom partners, licensees, tenants, whatever you want to call them, where they show this sag
can range from 400 millimetres to 1,400 millimetres. Well, 1,400 millimetres for a 40-metre span is
substantially more than 600 millimetres. Now, that may be also very rare, that 1,400

millimetre case, but
there are many cases, many, many cases where this sag is greater than the 600 millimetres be accommodated in this space. And once the 600 millimetres has been used up, you have to provide more
space to permit the communications -- the other communications users to be in that space.

903
MR. RUBY: Thank you. Mr. Wiebe, is there a minimum amount of space that has to be in place
between a communications wire and power cable?

904
MR. ENGELHART: Mr. Chairman, Mr. Ruby's questions initially were addressing issues that I think
had arisen in the CCTA panel and which I think could fairly be said to be issues
in the proceeding which Mr. Wiebe could usefully inform the Board on. I think we're now getting into material that could have been included in the CEA's evidence, could have been the subject of interrogatory processes, which we could have consulted with our engineers on in preparation for this proceeding. And instead it's being introduced in-chief here, not in response to anything that
was said previously but as new evidence. Mr. Wiebe will be leaving today. We'll have no opportunity to consult with our engineers about it. So it seems to me to
be a bit out of process, and I would ask your guidance on it.

905
MR. KAISER: Thank you, Mr. Engelhart. Do you have any response, Mr. Ruby?

906
MR. RUBY: I do. First of all, the CSA standard, which is the standard that governs everything Mr.
Wiebe is talking about, is referred to in the materials. As Mr. Lyle took Mr. -- the former
panel to the chapter, essentially, in the CEA evidence that dealt with all the technical
aspects of joint-use, pole heights, the importance of sag. I think Mr. Lyle even took the
witnesses to the particular sentences that referred to it. I'm quite content, with one other
point that I think does address something the previous panel says, to move on. I've completed my questions on this particular issue, in any event.

907
MR. KAISER: Mr. Engelhart, we did hear quite a bit about sag. I know you weren't here but this is not
the first time we've heard about this concept. Proceed, Mr. Ruby.

908
MR. RUBY: Thank you, sir.

909
Going back to the MTS materials, answers to interrogatories, MTS answered an Interrogatory No. 4 from
the CEA. Do you have that there, Mr. Wiebe?

910
MR. WIEBE: Yes.

911
MR. RUBY: And I don't want to put words in MTS's mouth, but one of the points being made here is
there is no difference in installation costs between rural and urban areas. And I'd ask you
for your experience on that question.

912
MR. WIEBE: That is not true of Manitoba. There are substantial differences between rural and urban.
In fact, there are substantial differences in rural, depending on what rural

area you
consider. For example, if we consider the rural areas north of the 53rd parallel where
rock and muskeg are the order of the day, those installation costs are substantially higher
than in southwestern Manitoba where sand is the foundation material that we have to
deal with.

913
In urban areas, of course, you have to deal with the extra added difficulty of congestion, be it other
persons above ground, traffic signals, the -- just working around traffic, costs a fair bit of money in the
installation process. So obviously the difference between rural and urban -- between rural and various
other areas of rural, between urban and various other areas of urban, is dramatic, and it can't be stated
there is no difference in costs of installation.

914
MR. RUBY: Mr. Wiebe, earlier, Mr. Glist said that you can sometimes put in -- or that you can put in
a communications wire on a joint-use pole without affecting how much primary -- or
ground clearance for the primary electricity conductor is required; is that correct?

915
MR. WIEBE: No, that's not correct.

916
MR. RUBY: Can you explain why.

917
MR. WIEBE: Probably my best explanation would be on the board again. Except for over walkways
and driveways, the CSA standard has the same ground clearance requirement for electric
or communications conductors. I'm drawing an imaginary line between the two
attachment points on adjacent poles. The CSA standard requires an electric utility's
wires, at maximum sag, to be at least 75 millimetres above this imaginary line. It spans
less than 75 metres long, which is most often the case. Therefore, for an electric utility
which without a communications attachment would have the same ground clearance
requirement as the communications company, when, as soon as the communications
company comes on board on the poles, the electric utility now must meet a new barrier, a
new lower clearance. And that lower clearance is substantially, in total, more than you
would have if you had electric only. So you could never, in my experience, install a
communications conductor on a pole that -- on a set of poles that was designed for
electric use only.

918
MR. RUBY: Mr. Ford has told us both in oral testimony and in his report that an assumption of 1 foot
per communications user is reasonable. Can I ask you, please, what happens to a
communications cable when you attach equipment, other equipment, to it?

919
MR. WIEBE: If you attach other equipment to it, be it overlashing, be it service equipment, be it
whatever they want to attach, and they do attach to their strand, that increases the sag of
the conductor that was originally there.

920
MR. RUBY: In your experience, is a 1-foot allotment for a cable company reasonable?

921
MR. WIEBE: It is not typical and it is not reasonable.

922
MR. RUBY: Mr. Wiebe, I'd like to ask you about the power space. I'd indicated to the Board, in an earlier question, that I would have you give some evidence on that since I asked a number of questions of the previous panel. Mr. Ford says the -- or at least assumes that power space is 11.5 feet high. What's your experience?

923
MR. WIEBE: My experience is that it can vary. It can vary widely. It depends on the span length. It depends on our conductors. It depends on what equipment we have there. The power space that the electric utility needs can be as little -- and I've seen as little as 4 feet, to as much as, in some cases, 15 feet.

924
MR. RUBY: And when at Manitoba Hydro you have to make an assumption about how much power space is going to be used on a -- to the extent there is a typical pole, what figure do you use?

925
MR. WIEBE: We use 3. -- let me just make sure I'm accurate here. I'd have to get that back to you. I don't have that number here. But it's -- we --

926
MR. RUBY: That's fine, Mr. Wiebe. We can come back to it. We'll come back to it, then, at the end.

927
At page 3 of Mr. Ford's report, do you have it there?

928
MR. WIEBE: Yes.

929
MR. RUBY: In the first full paragraph, he has a paragraph about Manitoba that I asked him about, and he told me if Manitoba said it was wrong, he'd admit that it was wrong. So can you take a look at that paragraph, and tell me if it correctly states the situation in Manitoba?

930
MR. WIEBE: It doesn't correctly state the situation in Manitoba. In Manitoba, MTS Allstream owns about 2,900 joint-use poles. Manitoba Hydro doesn't own all of them. It doesn't grant a lease to the incumbent for the entire space. It only has tenants where both the telecom and the cable TV partners have an agreement with Manitoba Hydro and/or MTS.

931
MR. RUBY: If we can return, because it is my last couple of questions, if you can take a look for me and tell me what the power space figure that Manitoba Hydro uses, it would be appreciated. And if you can't do, perhaps with the Board's indulgence, we can provide that by way of undertaking. It's just a measurement.

932
MR. KAISER: Is that acceptable to you, Mr. Brett and Mr. Engelhart? You may not have a chance to

cross-examine on that.

933
MR. RUBY: I'm happy to tell you what Mr. Wiebe told me earlier, if somebody's content to put it back to him. It's not the usual way it's done, but if it saves time.

934
MR. WIEBE: I have the document in the back and I didn't provide it.

935
MR. KAISER: Why don't you tell him and see if he can agree with you.

936
MR. RUBY: Well, Mr. Wiebe mentioned it was 10 feet to me, earlier.

937
MR. KAISER: Is that right?

938
MR. WIEBE: 3.3 was the number that I was going to use. That's very close to 10 feet. 3.3 metres was the number I was thinking of.

939
MR. RUBY: Thank you.

940
And through your work with the Canadian Electricity Association joint-use group, have you developed a view whether a 10-feet measurement for the power space or 11-feet, as an assumption, have you developed a view as to whether one or the other is more appropriate, on a national basis?

941
MR. WIEBE: On a national basis, my view is that the measurement that Manitoba uses is more typical. It is typically a smaller figure than the 11.5.

942
MR. RUBY: And what about for Ontario?

943
MR. WIEBE: I would see no reason, other than that's Milton Hydro's evidence, I would see no reason for the distribution to be any different in Ontario than it is in the rest of the country.

944
MR. RUBY: Thank you.

945
Mr. Chair, those are my questions on direct.

946
MR. KAISER: Thank you, Mr. Ruby.

947
CROSS-EXAMINATION BY MR. ENGELHART:

948
MR. ENGELHART: Good afternoon, Mr. Wiebe.

949
MR. WIEBE: Good afternoon.

950
MR. ENGELHART: Mr. Wiebe, I wonder if you could have a look at paragraph 19 and 20 of schedule 3 of your evidence. So that was schedule 3, paragraph 19 and 20, which is on page 6, and I'll just read it to you:

951
"The cost of poles varies considerably. As a result, the rate calculation methodology proposed in the Ford report is too simplistic to efficiently and equitably reflect an appropriate approach to setting power pole joint-use rates. Electricity..."

952
And I'm reading on in paragraph 20.

953
"Electricity distributors do not pay the same amount for raw power poles. The price varies by location, type of wood, chemical treatment, height, pole class, distance to transport, and the volume of poles purchased by the distributor. The cost of installation also varies as described below."

954
And when he was on the stand, Mr. Ford explained how it was that this Board could practically get over those problems. And I'd like to direct you to evidence of the EDA in this proceeding, where they filed a model agreement. And schedule E to that model agreement is "Financials: Methodology for Calculation of Annual Rate." Do you have that document with you?

955
MR. WIEBE: No, I don't.

956
MR. ENGELHART: Well, I'll refer to it for you, and if you have any trouble understanding what I'm saying, please let me know and I can bring my copy over for you to have a look.

957
MR. RUBY: Mr. Engelhart, with the Board's permission, I think it's only fair, if you're going to put something to the witness, that you put it in front of him.

958
MR. KAISER: Mr. Lyle, do we have a copy for the witness?

959
MR. LYLE: I think Mr. Brett's providing a copy.

960
MR. KAISER: Thank you.

961
MR. ENGELHART: So this is a schedule to the EDA's evidence, and if I could direct you to page 6 of schedule E. And if I could direct you under the heading "Cost of Capital" to the fifth paragraph, it says:

962
"For an electricity distribution utility that is subject to the regulations of Ontario Energy Board, and its prescribed uniform system of accounts, USOA, the cost of poles and fixtures is collected in its asset accounts. Because we are looking for the net book value, or net-embedded cost, we subtract the accumulated amortization or depreciation from this number. The book value of poles and fixtures minus the accumulated depreciation provides the net book value of poles and fixtures."

963
And the EDA goes on to say at the bottom of that page that, because there's poles there, and fixtures, you can take 85 percent of the cost or value in order to come up with an approximation for the pole costs.

964
Would you agree that that is a practical solution which gets around the difficulties that you identified in paragraph 19 and 20 of your evidence?

965
MR. WIEBE: It can address what's existing. It can't address what's being planned to be installed.

966
MR. ENGELHART: But would you agree with me that both sides of this dispute, the electrical distributors and the cable association, have proposed using embedded cost data, and, therefore, what's existing is what you need?

967
MR. RUBY: I don't mean to interrupt Mr. Engelhart, but the CEA hasn't made any proposals about what data to use at all for costing.

968
MR. ENGELHART: Fair enough.

969
MR. RUBY: As we've advised the Board, we've specifically undertaken not to do that.

970
MR. ENGELHART: Fair enough, Mr. Wiebe --

971
MS. FRIEDMAN: I'm sorry, I have to speak on behalf of the EDA as well. The EDA put that agreement as a sample and as a model agreement that had been -- was in the process of negotiation between a MEARIE Working Group and the CCTA. So, to say that the EDA has signed off on it, or has agreed to anything, would be incorrect. It is a sample of what parties can do in negotiations to get around practical problems.

972
MR. KAISER: I don't think Mr. Engelhart's suggesting that. He's suggesting that you relied on embedded cost in your evidence.

973
MS. FRIEDMAN: That agreement does, that model agreement does. The EDA has said nothing about what this Board ought to do.

974
MR. ENGELHART: Well, Mr. Wiebe, if this Board was content to use embedded cost data as the basis for calculating an appropriate pole rate, would you agree that the methodology that I've described, using the USOA, would be a practical solution to that problem?

975
MR. WIEBE: I'm not familiar with the USOA accounts, but I can say that an embedded-cost methodology can be used to overcome some of the installation costs, the variety of installation costs. But I would also say that you need to be careful that this is applicable to all. The embedded costs of one utility are -- as was already described, could vary dramatically from another.

976
MR. ENGELHART: But the "U" in uniform system of accounts means that they're uniform. So everyone should have an account like this, shouldn't they?

977
MR. WIEBE: Uniform means uniform accounts. It doesn't mean uniform costs of installation.

978
MR. ENGELHART: Right, but everyone could do this calculation if it kept the uniform system of accounts as they're supposed to.

979
MR. WIEBE: I'm not an expert on your accounts weaning.

980
MR. ENGELHART: Now, if I could ask you also to take a look at page 22 of your evidence, not the schedule 3 this time but the main evidence. Now you say in paragraph 51:

981
"Clearly the legal authority of a regulator to set joint-use rates, if it forebears from doing so, does not preclude successful negotiations between the parties. For example, British Columbia, Nova Scotia, Quebec and Newfoundland all have express legislation dealing with access to power poles, but in these four jurisdictions currently, rates are set entirely by agreement and without regulatory intervention."

982
But in the preceding paragraph, paragraph 50, you said that the Nova Scotia board had set a rate. So I think you would agree with me that in Nova Scotia it's not set entirely by agreement and without regulatory intervention, wouldn't you?

983
MR. WIEBE: I believe that there are parts of the Nova Scotia joint-use community that do not use the regulated rates. They have other agreements.

984
MR. ENGELHART: But we can say that that's a jurisdiction that has the regulatory authority and, at least for the case that we know about which is described in the previous paragraph, that someone's relied on regulatory intervention; is that right?

985
MR. WIEBE: Yes.

986
MR. ENGELHART: And with respect to B.C., you said, if I could direct --

987
MR. WIEBE: D.C? Could you please help me what you mean by D.C.?

988
MR. ENGELHART: Sorry, British Columbia.

989
MR. WIEBE: Oh, I see. B.C.

990
MR. ENGELHART: If I could direct you to paragraph 31 of your evidence. And this you say:

991
"Since at least 1971, for their joint-use poles, B.C. Hydro has owned 60 percent of each pole and Telus," the Telus predecessor was B.C. Tel, "has owned 40 percent of each pole. Maintenance expenses for these joint-use poles are also paid in a 60/40 ratio. Interestingly, for such poles cable distributors can seek

permission from either Telus or B.C. Hydro to attach to a joint-use pole."

992
So when you say in your evidence that even though there's legislation in B.C., they haven't had to use it,
that's not quite right, isn't it? Isn't the situation in B.C. that the cable company can simply access the same
pole by seeking permission from Telus and having the CRTC protection?

993
MR. WIEBE: If it chooses to go to Telus, their agreement would override -- would be used in place of
the B.C. Hydro one.

994
MR. ENGELHART: Right. And for Newfoundland, which you also mentioned, you say that they were
able to work something out there. Do you know what rate they're paying in Newfoundland?

995
MR. WIEBE: Not -- I'm not familiar with the current rate.

996
MR. ENGELHART: My company, Rogers Communications, or Rogers Cable, operates in Newfoundland, and it is, as you say in your evidence, a negotiated rate. Would it
surprise you that that rate is a lot less than the $40 that the EDA has requested?

997
MR. WIEBE: I'm not aware of what the rate is.

998
MR. ENGELHART: And what about the Quebec situation? Are you aware what the rate is there?

999
MR. WIEBE: No, I am not aware of what the rates are. They're under negotiation. I'm aware of that.

1000
MR. ENGELHART: So when you say that all of these places were able to work something out
without invoking the regulator, what does that prove? We've got a situation here
in Ontario where one side wants to pay $15, the other side has asked for $40. Is
it that useful to say, Well, in another jurisdiction where both sides want around
$15 dollars, there's no problem. Isn't there a problem if there's a huge gap in the
number and the two sides just can't narrow that gap?

1001
MR. WIEBE: Obviously, if the two sides can't narrow the gap, there's a problem. But the experience
has been, to date, that there has always been a mechanism to come to some agreement.

1002
MR. ENGELHART: I wonder if you could take a look at paragraph 21 of your evidence. Again, that's
the main evidence, not the schedule. And you say in the last sentence:

1003
"Alternatively, cable distributors can use telephone poles at rates and under conditions regulated by the
Canadian Radio Television and Telecommunications Commission (CRTC)."

1004

So do I take it the point of your sentence there to be, Well, if you don't like the rate that the electric distributors are charging you, you can always use the telephone poles? Is that what you're trying to say?

1005
MR. WIEBE: Telephone poles are always an alternative.

1006
MR. ENGELHART: Are they really? I mean, where you have a joint-use pole between the electric distributor and the phone company, isn't it much more common that there's one set of pole lines sometimes owned by the phone company and sometimes owned by the electrical distributor? It's not that common, is it, for there to be two sets of pole lines, one owned by each?

1007
MR. WIEBE: It's more common to have one set of poles, but both pole lines do exist in places.

1008
MR. ENGELHART: So in the common situation where there's just one set of poles, and the cable operator wants to go from point A to point B, and the poles he's looking at are electrical distributor poles, the fact that there's telephone poles somewhere else won't do him much good, will it?

1009
MR. WIEBE: Not in that location.

1010
MR. ENGELHART: And I wonder if I could ask you -- I'd like to ask you a few questions about some of the material on the height of the poles. So let's have a look, if we can, at page 7 of your evidence, at paragraph 21. Sorry, that's page 7 of schedule 3. I'm sorry. Schedule 3 of your evidence.

1011
So you say in paragraph 21 of schedule 3:

1012
"Power poles are not typically 40 feet in height as claimed by Mr. Ford. In fact, there are more 35-foot power poles than 40-foot power poles. From a sample of 18 electricity distributors, it is clear that there are a wide variety of power pole heights in Canada."

1013
Would you agree with me, Mr. Wiebe, that what really counts is the average height of those poles?

1014
MR. WIEBE: No, I would not agree with you on that.

1015
MR. ENGELHART: Well, Mr. Wiebe, remember I talked before about the uniform system of accounts.

1016
MR. WIEBE: Yes.

1017
MR. ENGELHART: And I talked to you about account number 1830. Would you agree with me that all the poles, big, small, skinny, fat, they all go into that same account?

1018
MR. WIEBE: I have to apologize, I am not familiar with the uniform system of accountings. I don't know what goes in.

1019
MR. ENGELHART: Well, if you would accept for a moment that there is such a thing as an account that all the poles go into, all the capital accounts for all the poles, and as a matter of fact there's another pole that all of the maintenance -- another account that all the maintenance costs go into, so if all the pole costs go in --

1020
MR. WIEBE: Okay.

1021
MR. ENGELHART: -- and they all get reflected in the rate, and the formula is based on the average height of those poles, don't you think that works?

1022
MR. WIEBE: The formula is based on the average height of those poles. I don't believe that works, no.

1023
MR. ENGELHART: How come?

1024
MR. WIEBE: Because the average height is not what's at play, when you do a specific installation, a new installation.

1025
MR. ENGELHART: But if each one of those installations, if the cost for each one of those installations makes it into the account, isn't it fair to do a formula based on the average height?

1026
MR. WIEBE: I believe you would need to know the number of attachments and the size of the communications space on all those poles to make that worthwhile.

1027
MR. ENGELHART: Would you agree with me that the average height of a power pole in Canada is, indeed, 40 feet, or very close to it?

1028
MR. WIEBE: I would agree with you that the average height of a joint-use pole is 40 feet, or very close to it.

1029
MR. ENGELHART: Okay. Now, in your discussion with Mr. Ruby, you said that there was a discussion about the number of attachments. And I wonder if we could go to paragraph 22 of the CEA evidence. And you say:

1030
"Central to his conclusion, Mr. Ford assumed that every joint-use pole has two communications attachments. This assumption is not supported by the aggregate data of 18 Canadian distributors."

1031
And you said to Mr. Ruby today that the average is much lower than two; is that right?

1032

MR. WIEBE: Yes.

1033
MR. ENGELHART: Well, let's take a look, if we can, at CCTA interrogatory 7 to the CEA. And in particular -- my mistake. We're having a look at appendix B of the CEA evidence. Oh, sorry, appendix B of the CEA interrogatory responses.

1034
So your interrogatory responses, and appendix B to those responses, and I've got a document called "CEA Distribution Pole Attachments Statistics." Do you have that document?

1035
MR. WIEBE: I don't have appendix B with me.

1036
MR. ENGELHART: Mr. Brett to the rescue again, or Ms. Assheton-Smith? Thank you.

1037
Now, section C -- I'll let you -- oh, you got the page?

1038
MR. WIEBE: Yes.

1039
MR. ENGELHART: Section C, that shows the number of communications attachments on every joint-use pole across Canada, doesn't it?

1040
MR. WIEBE: For 18 utilities, I believe.

1041
MR. ENGELHART: For 18 utilities. So there's 791,691 poles that have one attachment; is that right?

1042
MR. WIEBE: Yes.

1043
MR. ENGELHART: So I'm a little confused, because you told Mr. Ruby that it was very unlikely that you could have three attachments, but here we see 122,625 that have three attachments. We've got 40,997 with four attachments. We even have 7,304 with seven or more attachments. So, given that, why do you think it's highly unlikely that we could have three or more attachments?

1044
MR. WIEBE: My evidence was that it was highly unlikely that more than two attachments would fit in the 600-millimetre space. Not that they couldn't fit on the pole.

1045
MR. ENGELHART: So these are just really slack hydro-electric distributors that --

1046
MR. WIEBE: No, they probably provided more pole than the 600 millimetres that you're paying for, or might be paying for.

1047
MR. ENGELHART: I see. Now, you don't have a lot of competition in Manitoba so you don't have too many of these situations where there's three and four attachers per pole.

1048
MR. WIEBE: No, we don't in Manitoba.

1049
MR. ENGELHART: But let's take a look at the CCTA interrogatory responses. Oh, before we leave that chart, which is a good idea, would you agree with me that if I took the average, if I multiply 791,691 times 1, and if I went all the way down the line, 7,304 times 7, and then I divided by the total, would you agree, subject to check, that I'd get a number of 1.83?

1050
MR. WIEBE: I haven't done the calculation, but subject to check, there will be a number coming out of that.

1051
MR. ENGELHART: And if the number was 1.83, you would agree with me that that's not substantially less than 2, wouldn't you?

1052
MR. WIEBE: I would agree that it is substantial. It has a significant a impact.

1053
MR. ENGELHART: So you would agree with me that, other than your subjective view of the number of attachments, this evidence here in this appendix is the best evidence this Board has on the number of attachments per pole?

1054
MR. WIEBE: Across Canada?

1055
MR. ENGELHART: Yes.

1056
MR. WIEBE: Across Canada, yes.

1057
MR. ENGELHART: Then let's take a look, if we can, at some pictures that the CCTA provided in interrogatory response to CEA question 10.

1058
Now, the first picture that I'm looking at is a Hamilton Hydro pole. It's got one Hamilton firewire wire, a Cogeco cable TV wire, two Bell attachments, and a Mountain Cable TV, all in the communications space. Do you see that?

1059
MR. WIEBE: My picture is not legible, but -- I would also say the words say that. In communications space, there are four attachments.

1060
MR. ENGELHART: We'll get you a better picture. I think Mr. Ruby's office was a bit cheap in the photocopying.

1061
MR. RUBY: No, I think what happened is Mr. Brett faxed around a 111-page answers to interrogatories, and never sent it in any hard-copy form.

1062
MR. ENGELHART: All right. I'll withdraw my comment about your photocopying.

1063
MR. RUBY: Thank you.

1064

MR. ENGELHART: Does that look like four wires in the communications space to you?

1065

MR. WIEBE: There are four -- I can discern four communications conductors, and it says "in communications space." I would suggest to you that they're not within 600 millimetres.

1066

MR. ENGELHART: It looks like more to you?

1067

MR. WIEBE: Yes.

1068

MR. ENGELHART: How much more?

1069

MR. WIEBE: That's hard to estimate, but the transformer above the pole is larger than 600 millimetres, typically. And it looks to me like the communications conductors installed on that pole use more room than that transformer does.

1070

MR. ENGELHART: You've got a keen eye to be able to gauge that. Let's take a look at the next one we've got, which is Grimsby Hydro pole, and maybe we can get you a cleaner copy.

1071

MS. FRIEDMAN: Excuse me, sorry, Mr. Engelhart. If I can ask the Board, Mr. Weber, the President of Grimsby, is going to be here tomorrow. He indicated to me that he's got a concern that that's not a Grimsby Hydro pole, that it's, in fact -- that it might be a Bell pole, because he can't find that pole on his system and doesn't recognize it as one of his poles. I'm just wondering, Mr. Engelhart, if it matters to you, if you can turn to a different picture.

1072

MR. ENGELHART: Well, I think as long as it's a communications space, we'll just call it --

1073

MS. FRIEDMAN: Assume, okay.

1074

MR. ENGELHART: -- "unknown pole," "the communications space of the unknown pole."

1075

And that shows an unknown hydro fiber, Cogeco Cable and Bell Canada. So is that an example where you've got three attachments in one communications space? Well, sorry, Bell has three attachments, and a fourth attachment below the communications space, so they're actually saying you've got six communications attachments, five of which are within the communications space. Do you see that?

1076

MR. WIEBE: It's very difficult to see, even in the good picture it's very difficult to see. One of the reasons I'm saying that is because what I cannot tell is whether they've used both sides of the pole or not.

1077

MR. ENGELHART: Now, I wonder if we could have a look at paragraph 9 of your evidence. You say there, in the second sentence:

1078
"The CEA submits that the Board should take a principled approach to the proceeding, implementing its legislative objectives and imposing as little as possible on the free negotiation of creative joint-use negotiations."

1079
Would you agree with me that, if the parties have used their creative joint-use negotiations for years and have not been able to come up with a rate, it's appropriate for the Board to step in?

1080
MR. WIEBE: I wouldn't have a comment on that. My experience is across Canada we can come up with negotiated -- negotiations, and we can come up with agreements. There are a number of ways to do that.

1081
MR. ENGELHART: Now, in your position with Manitoba Hydro, as Mr. Ruby indicated, you are responsible for all joint-use poles, both from a business and engineering perspective; is that correct?

1082
MR. WIEBE: That's correct.

1083
MR. ENGELHART: And has Manitoba Hydro been involved in a negotiation with MTS Communications regarding the rental rate for those joint-use poles?

1084
MR. WIEBE: Yes.

1085
MR. ENGELHART: And were you involved in the arbitration that took place?

1086
MR. WIEBE: I was involved in the preparation of our argument.

1087
MR. ENGELHART: And have you -- so you were familiar with the arguments advanced by Manitoba Hydro in that proceeding; is that correct?

1088
MR. WIEBE: Yes.

1089
MR. ENGELHART: And am I correct that in that proceeding, Manitoba Hydro argued that, although CRTC decision 99-13 was ultimately dismissed by the Supreme Court of Canada on jurisdictional grounds, the rate-setting formula is sound and is being used other jurisdictions across Canada.

1090
MR. RUBY: Mr. Wiebe, before you answer that, Panel, I have an objection to that question, and it stemmed from the fact from information conveyed to me by counsel for Manitoba Hydro, who this morning advised me that that arbitration proceeding is a confidential arbitration in Manitoba, and that the contents of what went on were to remain private. Now, in a way, it's not my objection to raise, but I do so on behalf of Manitoba Hydro, since it's their witness. And I'm not sure where Mr. Engelhart wants to go with this, but --

1091
MR. KAISER: Well, if it's confidential, how does Mr. Engelhart have the argument?

1092
MR. RUBY: I don't know.

1093
MR. WIEBE: If he could share it with us, we'd certainly pursue it.

1094
MR. ENGELHART: I've got the arbitrator's decision, but if Mr. Wiebe wants to -- and if Mr. Ruby agrees, he could respond to that question in confidence to the Board, I'd be satisfied with that.

1095
MR. RUBY: I'd be content --

1096
MR. KAISER: Is that acceptable?

1097
MR. RUBY: I'd be content for him to respond to that question, because it --

1098
MR. KAISER: I think we would like to have an answer to the question, in confidence or otherwise.

1099
MR. RUBY: I don't think there would be any objection or I'd have no objection to providing that information in confidence. Where it becomes more of a problem, and I'm anticipating my friend a little bit, is, if he asks about either what the other party to that proceeding said or submitted to the arbitrator, or what happened in the arbitration proceeding itself, then it's a bit out of my hands.

1100
MR. ENGELHART: No, I'm happy with that question, Mr. Chairman.

1101
MR. KAISER: And the question, could you just rephrase the question, Mr. Engelhart?

1102
MR. ENGELHART: Certainly. In that proceeding, did Manitoba Hydro argue that although CRTC decision 99-13 was ultimately dismissed by the Supreme Court of Canada on jurisdictional grounds, the rate-setting formula is sound and is being used in other jurisdictions across Canada?

1103
MR. KAISER: Thank you. And I take it that you wish to have that answered in confidence?

1104
MR. RUBY: Based on the information provided to me by Manitoba Hydro's counsel, I'm passing on their request.

1105
MR. KAISER: No, I understand. And since he's not here, we'll respect that, and I think Mr. Engelhart has no objection to that procedure.

1106
MR. LYLE: So perhaps, Mr. Chair, should it be by way of undertaking, the response?

1107
MR. KAISER: Yes. Certainly.

1108
MR. LYLE: We'll mark that as Undertaking F.2.5.

1109
MR. KAISER: Can I just ask you, Mr. Wiebe, do you know the answer to the question, without gives it on the record? Do you even know if answer?

1110
MR. WIEBE: Yes, I know the answer to that question.

1111
MR. KAISER: All right. Fine. Thank you.

1112
UNDERTAKING NO. F.2.5: TO ANSWER IN CONFIDENCE WHETHER IN THE ARBITRATION CASE IN MANITOBA BETWEEN MTS ALLSTREAM AND MANITOBA HYDRO, DID MANITOBA HYDRO ARGUE THAT ALTHOUGH CRTC DECISION 99-13 WAS ULTIMATELY DISMISSED BY THE SUPREME COURT OF CANADA ON JURISDICTIONAL GROUNDS, THE RATE-SETTING FORMULA IS SOUND AND IS BEING USED IN OTHER JURISDICTIONS ACROSS CANADA

1113
MR. KAISER: You can whisper it to Mr. Lyle on your way to Chicago.

1114
MR. WIEBE: Is he coming with me?

1115
MS. CROWE: I'd just note that Mr. Ruby raised the concern that the other party to that arbitration might have a problem with, I think, it was the decision being quoted. MTS Allstream was the other party to that arbitration and doesn't have a concern with the arbitrator's decision being --

1116
MR. KAISER: Is it correct that the decision is a confidential one?

1117
MS. CROWE: My understanding was that some of the submissions made during the arbitration, confidentiality was claimed in relation to those. But no other agreement was made between parties that the ultimate decision would be confidential. It was done under the Manitoba Arbitration Act, and there were no additional requirements under that act that parties keep the final decision confidential. I believe it was claims with respect to submissions made during the arbitration proceeding.

1118
MR. RUBY: I can only tell the Board what I was told, which is that the agreement was that the arbitration would be held privately and in confidence.

1119
MR. KAISER: Well, until we hear further on that we'll just deal with it as we have it. I think if it's satisfactory for Mr. Engelhart's purposes, it's satisfactory for our purposes.

1120
MR. ENGELHART: Those are my questions, thank you very much, Mr. Chairman.

1121
MR. KAISER: Thank you. Do we have any other parties that wish to --

1122
MR. DINGWALL: I have a couple of brief questions, sir.

1123
MR. KAISER: Go ahead, please.

1124
CROSS-EXAMINATION BY MR. DINGWALL:

1125
MR. DINGWALL: Mr. Wiebe, at page 14 of your evidence, you discuss a number of costs related to pole ownership.

1126
MR. WIEBE: Yes.

1127
MR. DINGWALL: I note that the first of these, costs is a risk of stranded assets.

1128
MR. WIEBE: Yes.

1129
MR. DINGWALL: I'm wondering if you could clarify that for me. I'm not aware of how a pole that's built, how its costs might not be recovered.

1130
MR. WIEBE: When a pole is installed for joint use, it is an extra-height, extra-strength pole, over and above what the electricity company needs. If the pole is not utilized and paid for over the amortization period that is agreed upon, then you have extra height and extra strength that you don't need. And in that case, there are stranded assets with the pole.

1131
MR. DINGWALL: Now, in Manitoba are these assets stranded with the shareholder or with the ratepayer?

1132
MR. WIEBE: Could you clarify your question?

1133
MR. DINGWALL: Are your -- is the setting of your rates for joint-pole use conditional on you actually finding people to pay for the incremental costs or does the ratepayer pay for the cost of the assets that you built?

1134
MR. WIEBE: The ratepayer -- Manitoba Hydro's ratepayer only pays for that which Manitoba Hydro uses. If a communications utility wants to attach to a pole and a pole is either made-ready, or when it's first installed in the case of a new line, it's built stronger and higher, at the request of the communications company.

1135
And that rate is -- built into the rate is an amortization period over which that extra strength and extra height is paid back. And if that communications company removes its attachment prior to that amortization period, you will lose the amount of money that you had counted on.

1136
MR. DINGWALL: And which "you" would be doing the losing in that case, the ratepayer or the shareholder?

1137
MR. WIEBE: In Manitoba Hydro's case, the ratepayer is a shareholder.

1138
MR. DINGWALL: So would the loss, then, of the revenue from the joint asset flow back through rates or through a reduced return?

1139
MR. WIEBE: The stranded asset would have to be -- would have to be recovered from the ratepayer.

1140
MR. DINGWALL: So, in context of the Ontario utilities, is it your understanding that the Ontario utilities are proposing some mechanism that might lead their shareholders to undertake some of the financial risk associated with building poles on spec?

1141
MR. WIEBE: It is my understanding that the Ontario utilities currently use poles that can accommodate joint use on spec.

1142
MR. DINGWALL: And is it your understanding that, in the event that those poles are not used, that the ratepayer would bear the cost of that?

1143
MR. WIEBE: I'm not clear on the way -- the uniform system of accounts and all that works. But if it's similar to Manitoba, that would be the case.

1144
MR. DINGWALL: Okay. Now, as the record in this process is contemplating what happens in our jurisdictions, your experience in Manitoba is somewhat interesting. You mentioned earlier that Manitoba has a -- or that you've got a process under which you look at an amortization period for the efforts that you undertake to make a pole ready for joint use. What's that amortization period?

1145
MR. WIEBE: It's 25 years.

1146
MR. DINGWALL: And is that the same amortization period that you use for the life of the pole?

1147
MR. WIEBE: No, it isn't.

1148
MR. DINGWALL: What's your amortization period for the life of the pole?

1149
MR. WIEBE: Currently, I believe it's around 33 years.

1150
MR. DINGWALL: And do you find that that amortization period reflects the useful life of the poles in your system?

1151
MR. WIEBE: The amortization period is not considered to be equated or even

compared to the life of a
pole, because we believe that the amortization period is just the time over which we are
willing to finance the cost of the extra strength and the extra height.

1152
MR. DINGWALL: Okay. Does Manitoba Hydro follow a regulated form of accounting?

1153
MR. WIEBE: That's a question I don't have an answer to. I don't believe so, but I don't have the
definitive answer to that.

1154
MR. DINGWALL: Does Manitoba Hydro track the value or the asset value of its power poles?

1155
MR. WIEBE: Manitoba Hydro tracks the asset value of its power poles but doesn't differentiate
between joint-use and all other poles.

1156
MR. DINGWALL: So if I were to ask you what Manitoba Hydro's net-embedded cost of its power
poles would be, would you be in a position to answer that?

1157
MR. WIEBE: I would have to get some information, but I have that number available to me, yes.

1158
MR. DINGWALL: I wonder if I could ask for that by way of undertaking.

1159
MR. KAISER: Mr. Dingwall, why do we care what the embedded costs of poles are in Manitoba?

1160
MR. DINGWALL: Well, because we're looking at information in Ontario that's based on 1995.

1161
MR. KAISER: I understand.

1162
MR. DINGWALL: And we're also taking a look at what the cost might be in other jurisdictions. If
we've got a current number from another utility which might be comparable, it might give some information to this Board as to whether or not the figures that are being put forward to it, with a view to setting a licence condition rate, are
appropriate.

1163
MR. KAISER: Well, let's suppose the embedded costs are different. What does that tell us? The
embedded costs are going to be different between Manitoba and Ontario, no doubt. I just
don't see the relevance of it. Am I missing something?

1164
MR. DINGWALL: If I may, I'll withdraw the request. Those are my questions.

1165
MR. KAISER: Any other questions for this witness?

1166
MR. RUBY: No, sir. I just would point out, I did make the point of saying to Mr. Wiebe that the
answer -- that he was not here to talk about the detailed numbers for other

provinces.
And Mr. Engelhart took you to tab B of the answers to interrogatories, that long chart,
and showed you the first page. I would just mention to the Board that the detailed figures
are underneath it, and many pages for each of the 18 utilities, for which the CEA has
provided information.

1167
MR. KAISER: Thank you.

1168
MR. RUBY: Thank you, Mr. Chair.

1169
MR. KAISER: Do you have anything, Mr. Lyle?

1170
CROSS-EXAMINATION BY MR. LYLE:

1171
MR. LYLE: Just a couple of questions, Mr. Chair. And Mr. Wiebe, I'm not sure if you have it with
you, but I'm going direct you to Mr. Ford's evidence.

1172
MR. WIEBE: Yes.

1173
MR. LYLE: And specifically at the end of his evidence, his pole diagram.

1174
MR. WIEBE: Yes.

1175
MR. LYLE: And correct me if I am wrong, but I recollect from your testimony that you indicated that
you agreed that the average joint-use pole in Canada was around 40 feet.

1176
MR. WIEBE: If you averaged all the poles, it was around 40 feet.

1177
MR. LYLE: Okay. Looking at this diagram, do you have any concern -- and assuming now a 40-foot
pole for our purposes, do you have any concern with the amount of space allocated to buried space?

1178
MR. WIEBE: I would not use this model.

1179
MR. LYLE: No, I understand you wouldn't use this model.

1180
MR. WIEBE: Okay.

1181
MR. LYLE: If we got a 40-foot joint-use pole --

1182
MR. WIEBE: I would not use these numbers for a 40-foot joint-use pole.

1183
MR. LYLE: Okay. Tell me what numbers you would use for buried space for a 40-foot joint-use
pole?

1184
MR. WIEBE: I would determine what the actual communications requirement for

an average joint-use
pole is on Ontario, and I would include the communications sagging space.

1185
MR. LYLE: I'm focussing now just on the buried space.

1186
MR. WIEBE: I know. I don't have new numbers to give you. If that's what you're asking from me for
Ontario, I don't have new numbers to give you.

1187
MR. LYLE: I'm asking you, do you have any concern about putting 6 feet towards buried space?

1188
MR. WIEBE: No, I don't.

1189
MR. LYLE: Okay. Now, coming, then, to the clearance number of 17.25 feet, can you explain to me
whether you think that's an appropriate number?

1190
MR. WIEBE: I think it's an inappropriate number, because in actual fact, the communications
requirements are greater than 2 feet, and they use clearance -- what is considered here to
be clearance, and also more of the pole further up, to accommodate their connect -- their
attachments. So I would say the clearance space is much too large.

1191
MR. LYLE: Clearance space is much too large.

1192
MR. WIEBE: And communications space, 2 feet is too small.

1193
MR. LYLE: Okay. Can I turn you to your evidence, tab 3, schedule 3. Do you have that?

1194
MR. WIEBE: I don't have that one. Tab -- schedule 3?

1195
MR. LYLE: I believe it's your report.

1196
MR. WIEBE: Is it...

1197
MR. LYLE: No, it's...

1198
MR. WIEBE: Okay. I have an excerpt of my report that I only took with me from Winnipeg. I'm sorry, I
don't have the whole report with me.

1199
MR. LYLE: Do you have page 6?

1200
MR. WIEBE: Of schedule?

1201
MR. LYLE: Of your report, the schedule 3?

1202
MR. WIEBE: No, I don't.

1203
MR. LYLE: Okay, well, let me read it for you. You say --

1204
MS. FRIEDMAN: We'll give it to him.

1205
MR. LYLE: Okay.

1206
MR. WIEBE: Okay.

1207
MR. LYLE: And the fourth line down, it states:

1208
"The most common amount of pole space allocated to support communications wires and equipment is
600 millimetres."

1209
And that's about 2 feet; right?

1210
MR. WIEBE: Yes.

1211
MR. LYLE: Okay. So can you explain for me why here it's appropriate, it's the most common form,
and then what you're telling me later, that it's not sufficient communication space?

1212
MR. WIEBE: It's the space that is most commonly allocated on the pole for communications companies
to attach to. It's not the space they actually require in totality for the pole to support its
conductors.

1213
MR. LYLE: Okay. So tell me, then, can you give me a number, then, that does deal with the totality
of the space that's necessary for the communications users?

1214
MR. WIEBE: It's based on the sag of the conductors. And I don't -- like, as I said before, the sag varies
between 400 millimetres and 1,400 millimetres, and I can't give you one.

1215
MR. LYLE: You can't give me a typical then?

1216
MR. WIEBE: No.

1217
MR. LYLE: Okay. Thank you, I think those are all my questions, Mr. Chair.

1218
QUESTIONS FROM THE BOARD:

1219
MS. CHAPLIN: Thank you. I just want to follow on to make sure I understand, from some of the
information you were giving Mr. Lyle. So again, I'm looking at this diagram of a
typical pole.

1220
MR. WIEBE: Right.

1221

MS. CHAPLIN: Now, am I correct that it's your view that, in that space that's currently identified as a communications space, that there could be an attachment at the bottom of that space?

1222
MR. WIEBE: That's likely.

1223
MS. CHAPLIN: Okay. But am I correct in your understanding as the reason the clearance space is 17.25 -- in other words, if the communications were not there, that clearance space would not need to be as large? Is that what you are explaining?

1224
MR. WIEBE: The clearance space required for communications and for electric utilities is exactly the same, except for when we cross walkways and driveways, where the communications space may be a little bit less. But otherwise we have the same minimum ground clearance requirements in CSA.

1225
MS. CHAPLIN: Okay, so am I correct in understanding your view is that when you have a joint-use pole, its total height is higher than it would otherwise need to be?

1226
MR. WIEBE: Almost always.

1227
MS. CHAPLIN: Okay. And likewise, I believe you've also explained that you believe this power space at the top, you believe, is more accurately less than the 11.5 that's here?

1228
MR. WIEBE: That's my experience.

1229
MS. CHAPLIN: Okay. And am I also correct that this separation space is, in your view, attributable to communication, because it has to account for the electricity line sag? Is that --

1230
MR. WIEBE: No, the separation space is specifically for communications -- for the protection of communications workers. That's the way CSA put it in, was to get the communication workers safe from electric utility equipment.

1231
MS. CHAPLIN: Okay. So, then, perhaps you could -- on your diagram, you indicated that the sag from the electricity lines at the top of the pole had to maintain a certain clearance from that separation space.

1232
MR. WIEBE: Horizontal line, yes it did.

1233
MS. CHAPLIN: Okay. Okay. Thank you.

1234
MR. SOMMERVILLE: I have no questions.

1235
MR. WIEBE: I have to admit, it's a complicated matter for what everybody would hope to be a simple

matter. But each joint-use pole is an engineered pole.

1236
MR. KAISER: Mr. Wiebe, just one question, and it goes back to the stranded assets. It sounds like you buy two classes of poles, a joint-use pole which you've now told us is usually higher, and I'll call it an ordinary pole; is that right?

1237
MR. WIEBE: We buy many classes but we always have stronger, higher poles for joint use, yes.

1238
MR. KAISER: Just as a matter of interest, what percentage of the poles that you would buy in any given year would be joint-use poles?

1239
MR. WIEBE: Maybe I didn't make myself clear. What we buy is a whole range of height and class, and we use them for ourselves as well. So we will just -- it's just that one isn't the joint-use as to a non-joint-use pole. It's just that in a given circumstance, the joint-use pole is always higher and stronger, so we will take the next one over.

1240
So we don't buy joint-use poles. We buy higher and stronger poles for various reasons, for many reasons, and we have them in our inventory, but we would be required to be using a higher and stronger pole every time we do joint use.

1241
MR. KAISER: So when you told us about the stranded assets, you buy the higher, stronger poles because the cable companies or somebody else may come around and want an attachment and need it for that purpose. You have them in your inventory. But you also need them for other purposes?

1242
MR. WIEBE: We also need them for other purposes. We obviously wouldn't have to buy as many if we didn't have joint use.

1243
MR. KAISER: And you raised a spectre that you bought these poles, which we now understand could be used for joint use but also other purposes where you require a stronger pole, but it may be that you don't use them all up, so you have some concept you have an extra cost. You bought the stronger pole and maybe you don't have a customer that wants to attach.

1244
MR. WIEBE: So you've installed a higher and stronger pole, is that what you're saying?

1245
MR. KAISER: You raised the concept of stranded asset, which I understood you had bought a more expensive pole or a stronger pole --

1246
MR. WIEBE: And installed it.

1247
MR. KAISER: And installed it, and a customer didn't materialize; right?

1248
MR. WIEBE: In Manitoba Hydro, that isn't the case, but nationally, that can be the case.

1249
MR. KAISER: All right, so it's not the case in Manitoba?

1250
MR. WIEBE: Manitoba Hydro doesn't install extra-height, extra-strength poles unless there is a customer.

1251
MR. KAISER: Okay. All right, so you don't have a stranded asset issue.

1252
MR. WIEBE: No.

1253
MR. KAISER: Okay. I misunderstood, thank you.

1254
MR. WIEBE: But you can have a stranded asset issue like you described.

1255
MR. KAISER: Well, do you know?

1256
MR. WIEBE: Yes, I do no know nationally that exists, yes.

1257
MR. KAISER: All right. Did you have anything further?

1258
Thank you, sir. Thank you, I hope you catch your plane.

1259
MR. WIEBE: Thank you.

1260
MR. SOMMERVILLE: Good luck.

1261
PROCEDURAL MATTERS:

1262
MR. RUBY: Mr. Chair, if I can just, one housekeeping matter. I notice Mr. Wiebe drew something. Obviously it's up to the Panel whether it should be marked as the next exhibit or not, and kept for the Panel's use.

1263
MR. LYLE: The only issue from me would be storage, Mr. Chair.

1264
MR. KAISER: I'm sure with all the technology we have we can reduce it down.

1265
MR. LYLE: Certainly. We'll mark it as Exhibit E.2.2. And sir, I was actually remiss. I should have marked the excerpt from the Rate Handbook as an exhibit, so I'll mark that as Exhibit E.2.3.

1266
EXHIBIT NO. E.2.2 DRAWING MADE BY MR. ERNST WIEBE

1267
EXHIBIT NO. E.2.3 EXCERPT FROM THE RATE HANDBOOK

1268
MR. LYLE: I Do have one minor matter with respect to the transcript, Mr. Chair. And it's a reference in line 1752, and you're quoted as saying that: "We could hear the Allstream witness on the 18th," and I know I heard the 8th. And I don't know if that was your intention.

1269
MR. KAISER: Yes, you're correct.

1270
MR. LYLE: And just then, sir, with respect to the schedule for tomorrow.

1271
MR. KAISER: Tomorrow we'll be starting at 11:00 I believe it is?

1272
MR. LYLE: That's correct. And I believe it's Mr. Mitchell, Dr. Mitchell who will be here.

1273
MS. FRIEDMAN: Mr. Lyle, I've discussed this with Mr. Brett. We're going to have the LDC panel first because they will be much briefer because cross-examination isn't occurring until November 10th. So the LDC panel will be giving their evidence-in-chief, and then Mr. Mitchell will be up. Dr. Mitchell, sorry.

1274
MR. KAISER: Is that acceptable, Mr. Brett?

1275
MR. BRETT: Yes, I think that's what we understood was going to be the case. Just a moment, please. That's fine, sir. Thank you.

1276
MR. KAISER: Thank you. We'll adjourn until 11:00 tomorrow morning.

1277
--- Whereupon the hearing adjourned at 4:59 p.m.

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ONTARIO ENERGY BOARD

Volume: 3

28 OCTOBER 2004

BEFORE:

G. KAISER
PRESIDING MEMBER AND VICE CHAIR

P. SOMMERVILLE
MEMBER

C. CHAPLIN
MEMBER

RP-2003-0249

IN THE MATTER OF a hearing held on Thursday, 28 October 2004, in Toronto, Ontario; IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B); AND IN THE MATTER OF an Application pursuant to section 74 of the Ontario Energy Board Act, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licences of electricity distributors.

RP-2003-0249

28 OCTOBER 2004

HEARING HELD AT TORONTO, ONTARIO

APPEARANCES

7

MIKE LYLE
Board Counsel

TOM BRETT
Canadian Cable Television Association

KEN ENGELHART
Canadian Cable Television Association

PETER RUBY
Canadian Electricity Association

KELLY FRIEDMAN
The Electricity Distributors Association

BRIAN DINGWALL
Energy Probe

JENNY CROWE
MTS Allstream Inc.

LJUBA DJURDJEVIC
Toronto Hydro

ANDREW LOKAN
Power Workers' Union

CAROLINE DIGNARD
Cogeco

ADELE PANTUSA
Hydro One

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--- Upon commencing at 11:04 a.m.

15
MR. KAISER: Please be seated. Mr. Lyle.

16
MR. LYLE: Good morning, Mr. Chair. I believe Ms. Friedman's panel of utility executive witnesses is here to give evidence-in-chief.

17
MR. KAISER: Thank you. Ms. Friedman.

18
MS. FRIEDMAN: And perhaps what I'll do is just introduce them, and then they can be sworn. I don't believe you've been sworn yet, have you?

19
MR. STOKMAN: No.

20
MS. FRIEDMAN: Okay. Starting closest to the Board Panel is Art Stokman, who is the VP of engineering and operations for Guelph Hydroelectric Systems Inc. Next to him is Dan Charron, manager of engineering for Chatham-Kent Hydro. Next to him is Tom Kosnik, President and Chief Operating Officer for Enwin Powerlines, and finally Brian Weber, President and Chief Executive Office of Grimsby Power.

21
EDA PANEL 1 - STOKMAN, CHARRON, KOSNIK, WEBBER:

22
A.STOKMAN; Sworn.

23
D.CHARRON; Sworn.

24
T.KOSNIK; Sworn.

25
B.WEBBER; Sworn.

26
EXAMINATION BY MS. FRIEDMAN:

27
MS. FRIEDMAN: Mr. Stokman, we'll start with you. In CCTA response to Board Interrogatory No. 2, it is stated that:

28
"At various times in 2003 and 2004 Guelph refused to issue permits to Rogers until a new pole rate had been determined."

29
Would you please comment on that allegation for the Board.

30
MR. STOKMAN: I was surprised by the allegation. We did not, at the time of that comment by CCTA, in 2004, we had not received any permit applications on record in our engineering department. Our first permits were received in 2004, and overlash in

October, early October, and we are processing it. And with reference to 2003, in checking with the records, we approved every permit application for attachments for Rogers Cable, and overlash permits applications, within three days and just over three weeks.

31
MS. FRIEDMAN: Mr. Stokman, you understand that in this proceeding the CCTA has alleged that access rates being charged by LDCs are excessive or are not truly cost-based. Can you tell me what your rate was in 2003?

32
MR. STOKMAN: We, we were negotiating in 2003 with Rogers. We settled on a rate in 2003 of just under $20, including tree trimming. We did not set a rate yet for 2004 because we are part of a group of utilities with the MEARIE group negotiating with the CCTA, and we are hoping that the rates will be settled based more towards a tax-based corporation. And we did not base our rate in 2003 on a tax-based corporation, we simply wanted to finalize rates up to that point.

33
MS. FRIEDMAN: What rate are you looking for, for 2004?

34
MR. STOKMAN: We're looking for a rate that is based on the MEARIE model, on the cost-based depreciation, maintenance and operation of the system, administration, perhaps the I think, performance. There are, I hate to call it a nuisance factor perhaps, you have to work around joint-use, and a fair rate that that establishes.

35
MS. FRIEDMAN: Has Rogers ever asked Guelph Hydro how you've come up with the rate that you request?

36
MR. STOKMAN: Oh certainly, we talked about the rate during 2003. In fact, we settled early in 2004 and retroactively applied the rate to 2002 and 2003. But we came to a conclusion on the rates for 2002 and 2003 in April 2004. But -- and so we were negotiating back and forth. The basis for our agreed rate was simply this, that we agreed to the highest fixed rate in the Province, plus $2 for tree trimming per pole.

37
MS. FRIEDMAN: Has Rogers ever asked you for a breakdown of your costs that go into your rate?

38
MR. STOKMAN: No, we didn't get into the costs.

39
MS. FRIEDMAN: Mr. Stokman, when you purchase new poles for installation, do you take into account the needs of cable companies?

40
MR. STOKMAN: Yes, we do. We buy every pole understanding that we need additional height for joint-use parties, whether that be one, two, or three. We just allow a standard clearance of about 3 feet, and know that within the next 2 feet you can add three telecoms, up to three telecoms, telecommunication companies. So every pole that we buy, we install in areas on main streets. We understand that joint use will be there and you might as well buy it from the beginning, might as well install it right off the bat.

41
MS. FRIEDMAN: Thank you, Mr. Stokman.

42
I'm going turn to Mr. Charron. Mr. Charron, in CCTA response to Interrogatory No. 1A, it's stated that:

43
"Chatham-Kent Hydro rebuffed a proposal for an access charge of greater than $15.65 per pole."

44
Can you comment on that allegation against Chatham-Kent?

45
MR. CHARRON: That was the initial proposal from Cogeco at the time, I believe this was for the 2002 rate year. At that time, internally, within the company, we were discussing something that was more reflective of the way the utility that it was now operating under, including corporate taxes and rate of return and that type of thing. So we then responded with a new rate proposal, and that was closer to $30 for 2002.

46
MS. FRIEDMAN: And what was that rate based on?

47
MR. CHARRON: Again, that rate was based on the initial MEA rates that were set up in the 1990s, forwarded or adjusted to CPI up to that date, with the corporate tax added on top of that, and rate of return as well.

48
MS. FRIEDMAN: Has Cogeco ever asked you how you came up with that rate?

49
MR. CHARRON: They did. I did receive a letter from Cogeco asking, because at the time we were negotiating a new agreement, and of course the rates are key to that. The $30 rate was discussed and they needed more explanation, so I sent a letter and explained it and broke it down exactly the way I've described it.

50
MS. FRIEDMAN: Did they ask for a breakdown of your costs?

51
MR. CHARRON: Not beyond that, no.

52
MS. FRIEDMAN: When Chatham-Kent is planning a pole line or installing new poles, do you consult Cogeco?

53
MR. CHARRON: We do.

54
MS. FRIEDMAN: In what way?

55
MR. CHARRON: There are several mechanisms that we go about making sure that all parties that are affected by pole line construction are aware of it. One of the main ones it through the utility coordinating committee meetings, UCC meetings. Those are chaired by the municipality and they occur regularly, I think in our case monthly. And we, at that time, discuss future and current projects, all the utilities

do, and
make everybody aware of what we're doing at that time.

56
MS. FRIEDMAN: Does Cogeco ever raise any concerns or ask you for any accommodation during
those meetings?

57
MR. CHARRON: I believe they do - I don't attend the meetings, somebody does on my behalf - but
discussions are done on a per-project basis. I know that, for instance, in a residential subdivision there usually is quite a bit of discussion back and forth.

58
MS. FRIEDMAN: Mr. Charron, I understand from Mr. Greenham's testimony of Tuesday that there
was no retroactive clause in the letter of understanding that Chatham-Kent proposed to Cogeco. Did they ask you for a retroactivity clause?

59
MR. CHARRON: During a telephone conversation, and verbally, they did. It was a very
spontaneous, quick discussion and at the time we decided it was not something we wanted to entertain. It was a decision made internally, within the company. It
was decided that we wanted to move forward from this point onwards and close off the previous years and not have to worry about any form of extra billing or credit at that time.

60
MS. FRIEDMAN: Do Cogeco attachments remain on your poles today?

61
MR. CHARRON: They do.

62
MS. FRIEDMAN: And have invoices been set for access rates?

63
MR. CHARRON: Yes. Invoices for the 2002 year, as well as an invoice for the 2003 year, those are
still outstanding. They've -- our normal receivables, they are still outstanding.
There are no more receivables processed. They do get reminders ever month. Interest rates have been backed out as a measure of good faith, or a gesture of good faith. And the last notice they received, I believe, was August of this year.

64
MS. FRIEDMAN: So what was the last year for which you received payment?

65
MR. CHARRON: 2001.

66
MS. FRIEDMAN: And what was the rate charged on those invoices?

67
MR. CHARRON: That particular rate in 2001 was $16.84 per pole.

68
MS. FRIEDMAN: Thank you, Mr. Charron.

69
I'm going to move to Mr. Kosnik.

70
Mr. Kosnik, in CCTA response to Interrogatory No. 1A, it said that Enwin rebuffed a proposal for an

access charge of greater than $15.65 per pole per year. Is that true?

71
MR. KOSNIK: That's correct.

72
MS. FRIEDMAN: I understand that you were engaged in negotiations with Cogeco over a form of agreement until very recently. Please tell the Board about those negotiations.

73
MR. KOSNIK: Yes. The negotiations started early in 2002. We put Cogeco and Bell on notice that we were interested in revising the joint-use agreements, including the rates. And we notified them that we were going to start the process. And that we did -- at that point in time, started a process by which we started exchanging post agreements. In other words, we were using the standard MEA agreement at that point in time, and we had marked it up, and so forth, to reflect what we considered fair value for attachment, and that was $45 per attachment.

74
The dialogue, or the process, by which this whole thing was handled went over -- the process went over a period of time almost two to three years. Like I say, we put them on notice in 2002. We sent them a draft agreement. They had requested some changes. We had made changes to the draft agreement.

75
At no point in time did they make any comment regarding the $45 attachment. That was not an issue. And then, certainly, we didn't hear back from them for a considerable length of time. And I think that was in 2003 that we were asking, What's going on with the agreement? Why isn't the agreement executed?

76
And we were told at that point in time - and I think that was October of 2003 - that there was an issue with the rate. In fact, it was vis-…-vis a conference call that I had with, I understand it was Mr. Greenham and Mr. Schermel, who is the VP of Cogeco. They had indicated very clearly at that point in time that they weren't willing to pay us anything more, or set a precedent in the province, than what they were currently paying to a utility in Ontario. And that was Milton, as I understand it. And they were paying $40.92 to Milton.

77
So they had suggested, at that point in time, that a more appropriate rate would be $40.92. Given the fact that we wanted to show some flexibility with regards to negotiating with Cogeco, and we had good relationships with them, we decided at that point in time to agree with the $40.92 rate. And that was, like I say, October of 2003.

78
We had then sent contracts back again to get revised and so forth, and executed, and several months went by. We still didn't receive back the executed contracts. We made inquiries again. In fact, I had asked for a conference call because of the slowness of the process, and this was in the early spring of 2004.

79

That conference call, the president of Cogeco participated, as well as Mr. Schermel and, I think, Mr. Greenham. And at that point in time we were told by the president, very clearly, that the vice-president wasn't empowered to agree to a rate of $40.92, which certainly baffled us given the fact that we're all sitting down negotiating and we thought that he was negotiating on behalf of Cogeco.

80
And he had indicated very, very clearly at that point in time that his board's direction has been that they will not pay anything more than $30 per attachment. Well, that absolutely floored me, because 18 months went by, or more, and here we are, now we're renegotiating a contract, and the fact was that we thought we had a contract in good faith.

81
And so, at that point in time, I indicated to them that they're going to have to do better than $30 per attachment. And they didn't. Given the fact that we knew that we knew - and we were advised, certainly, by Cogeco, that this whole issue was going to be forwarded over to the OEB to deal with - we thought at that point in time it would be appropriate, then, to wait to hear the decision.

82
MS. FRIEDMAN: Did Cogeco ever ask you how you came up with a $45 rate?

83
MR. KOSNIK: To the best of my recollection, no.

84
MS. FRIEDMAN: What did you base that rate on?

85
MR. KOSNIK: We had a very simplistic formula. In fact, it was based on the installation of a typical 40-foot pole, 40-foot wooden pole. Approximate installation cost was $1,350. We used a rate of return of 9.88, and we also used a depreciation period of 40 years. We calculated an annuity of about $135, and we divided it by three parties. The three parties would be ourselves and Cogeco and Bell. And so we came up with $45.

86
MS. FRIEDMAN: Mr. Kosnik, when Enwin is planning a pole line or installing new poles, do you consult with Cogeco?

87
MR. KOSNIK: Absolutely. Just like Chatham, we also have utility coordinating meetings in which we exchanged our plans with, certainly, all the utilities, including Cogeco. We also, when we are rebuilding an area, we give them a notice, in form of a letter, as well as copies of all the drawings, and we send them the drawings and very clearly the drawings indicate what our intentions are in that area.

88
MS. FRIEDMAN: Thank you, Mr. Kosnik.

89
Mr. Weber, I'll turn to you. Just to begin with a clarification, a matter that arose yesterday. There's a picture of a pole attached to CCTA's response to CEA Interrogatory 7B, and it's said to be owned by Grimsby Hydro. I understand you had a concern about that picture, and I'd just like you to

explain your
concern to the Board.

90
MR. WEBER: Yes, in knowing the system, I believe that the pole that they have taken a picture of is
actually a Bell telephone pole. It is not a -- not one that's owned by Grimsby Power.

91
MS. FRIEDMAN: Okay. Thank you. Mr. Weber, Grimsby Power has been mentioned several times
in the CCTA evidence, both in interrogatory responses and in oral testimony that
we've heard so far in this hearing. So I'm going to put those comments to you and
ask you for your reaction.

92
To begin with, in CCTA response to EDA Interrogatory 2A(1), the CCTA points to letters that were
attached to its evidence that suggest that Grimsby Power threatened to deny any new pole attachments, or
to deny Cogeco any new pole permits, unless Cogeco agreed to negotiate final terms acceptable to
Grimsby. Did you make such a threat?

93
MR. WEBER: Yes, we did.

94
MS. FRIEDMAN: Can you explain what led to it?

95
MR. WEBER: I think I have to go back in history to explain that Grimsby is a very small utility. We
have about 9,000 customers. And we've been in the process of trying to negotiate
agreements independently of MEARIE or the MEA, or, as it's now called, the EDA,
because we walk the same streets as a lot of our customers, and we didn't feel that
anybody wins when you get into legal proceedings or get smeared in the newspapers.

96
So, back in 1997, we took a look at the MEA formula, because at that time it was out, we felt that there
was some justification to the rationale that they were using, but with our costs being significantly less,
we felt that the $42 that was being asked for back in 1997 was way too high. But we wanted to negotiate
something that more represented the costs, and look at it from a business base. And I think if somebody
came to me and said my costs were going to escalate that much, I'd know what opinion I would have, and
that would be shock.

97
So we tried to phase something in over time, through '97 through till the end of 2001. And I think, as
many people are aware, there's a number of changes that have happened to us in that -- back in 2000. We
didn't ask to be set up as corporations but we're now set up as business corporations and have some other
responsibilities that we have to manage. So because that agreement had expired, that original agreement
was with Western Coaxial. Western Coaxial was purchased by Cogeco, don't know when, but throughout
the time that that contract ran. So it did carry forward. Then we tried to sit down with Cogeco to
negotiate a new agreement that was separate. We knew there were some things going on that

MEARIE,
and MMI is, I believe, the organization that was looking after that.

98
The difficulty that we had was that we didn't want to set up any retroactive clauses, we wanted something
that was definitive. We made that known to Cogeco, that we wanted to set a fee with no retroactive
clauses in the agreement at all. We met with Steve Greenham, explained our position to him at the time.
Steve then left, went back. I'm assuming -- I'm sure he's probably testified as to what transpired at their
end. But he came back to us with a follow-up question, wanting to know how we had come up with the
$30 per pole that we had suggested as the proposed rate. And basically, we took the end rate, added some
tax components, looked at the cost that we're now doing, some profit, and came up with that $30, that $30
rate.

99
That being explained to Steve, he went back, a little bit of time transpired. And Steve sent me an e-mail
on October the 6th indicating that, well, it actually was an addendum to the agreement. And it was some
word-smithing, if you will, that Cogeco was looking at, some negotiations in some of the terms in the
agreement. And in that addendum was the fixed rate of $30 being proposed back to us then by Cogeco.

100
Based on that, we felt we had a verbal agreement for the $30, and we asked Steve to come back and just
explain some of the rationale behind some of the word-smithing that Cogeco was looking for and see if
we could come to some resolution to it. We sat down, I think we agreed to some, disagreed with some
other terms that they were looking for, and both of us agreed to look at a third set of terms, so we were
each going in our own separate way, feeling that at that point we had basically an agreement in principle
with the exception of some additional word-smithing that would go on.

101
We heard nothing then from Steve till about March, and in March we got notice from Cogeco that they
wanted retroactivity and some other items back in the agreement that were already -- had already been
agreed to by Steve not to be part of the agreement. It was at that point in time when we sent them a letter,
and we also became aware that they filed application, or the CCTA filed an application to the OEB some
months before that. We felt that they were negotiating in bad faith, and refused -- sent them a letter
refusing any new pole attachments.

102
MS. FRIEDMAN: Okay. You explained that in 1997, when your earlier agreement conspired, you
looked at the MEARIE model and you thought that rate was too high, given the costs in Grimsby. What was the rate you determined was more appropriate for Grimsby?

103
MR. WEBER: We came up with a rate somewhere in the neighbourhood -- well, let me back up and say
that I came up with a rate. The Commission rejected that rate because they felt that they
had to walk the same streets as I did, and came up with a rate somewhere around $15.
That agreement, that five-year agreement, recognizing that they needed to move

to a
higher rate, then had the pole rental rate being increased, not by CPI but by 5 percent
each year, in order to move that rate closer to what the Commission, at that time, felt was
more fair and reasonable.

104
MS. FRIEDMAN: Fair and reasonable in what way?

105
MR. WEBER: To recover actual costs.

106
MS. FRIEDMAN: On Tuesday, October 26th, Mr. Greenham testified at line 735 as follows, and I'll
just quote it to you:

107
"We currently are still attached and Enwin Hydro is actually still issuing permits. We've -- so we've
continued to request permits and we continue to enjoy getting them approved. It's not the case with
Oakville Hydro or Grimsby Hydro."

108
Is it the case that Grimsby is, in fact, denying permits?

109
MR. WEBER: They've not applied.

110
MS. FRIEDMAN: Now, have they been able to, in your view, maintain their operations without
applying for permits?

111
MR. WEBER: We believe that they have. Most of Grimsby has been sufficiently rebuilt below the
escarpment, and that's where the majority of the new construction is going on. We're
rapidly growing from a residential perspective. And in addition, our current agreement
indicates that they only require one pole permit per attachment. So if they were to put a
second attachment on, such as an amplifier, that they wouldn't need to come back to us
with a revised permit, just a revised count.

112
MS. FRIEDMAN: Has Cogeco ever asked you to break down the costs or give the methodology for
how you came up with the rate that you've asked for?

113
MR. WEBER: Other than as previously explained where we looked at going from the end rate at the
term of -- at the end of the term of the agreement, to the $30, we did explain that, but
other than that they've asked for no additional cost breakdown as to what our costs are.

114
MS. FRIEDMAN: Okay. When Grimsby Power is planning a pole line or installing new poles, do
you consult with Cogeco?

115
MR. WEBER: We do. There is a Niagara coordinating meeting. And at the Niagara coordinating
meeting, they get together quarterly, you have the towns of Niagara region,

which is approximately 11 of them, you have Bell, Cogeco is there, and the Hydro utilities. They talk about their capital forecasts, where they're going to work over the next year. So that if a municipality is widening a road and we have to move a pole line, we are aware of it at that time. So we do work with them, but as far as any of the intricacies of that and how much discussion goes on between my engineering department and Cogeco, I would not know.

116
MS. FRIEDMAN: Thank you, Mr. Weber. Those are all the questions I have for the panel. And they understand they're to return for cross-examination on November 10th.

117
MR. KAISER: Thank you.

118
You're excused now. Thank you very much for coming. We'll see you back on November the 10th.

119
MR. KAISER: Mr. Ruby.

120
MR. RUBY: Mr. Chair, with your permission, we'd ask Dr. Mitchell to be the next witness.

121
MR. KAISER: Please proceed.

122
MS. FRIEDMAN: Just to advise the Board, as you know, that the next witness is the expert witness of both the EDA and the CEA, and we've decided that Mr. Ruby will lead him in-chief.

123
MR. KAISER: Thank you.

124
MR. RUBY: Mr. Chair and Panel, if I may introduce Dr. Bridger Mitchell. As Ms. Friedman said, he's being put forward as an expert witness for both the EDA and CEA, and I'd ask at this point if he could be sworn, please.

125
EDA AND CEA PANEL 1 - MITCHELL:

126
B.MITCHELL; Sworn.

127
MR. KAISER: Mr. Ruby.

128
EXAMINATION BY MR. RUBY:

129
MR. RUBY: Thank you, Mr. Chair.

130
Mr. Mitchell -- or, excuse me, Dr. Mitchell, before you begin your evidence, perhaps we can talk a little bit about your background. Dr. Mitchell, can you tell the Board whether you have -- or give them, I

guess, the highlights of your educational background.

131
DR. MITCHELL: Certainly. I did my undergraduate work at Stanford University, with a bachelors degree in economics. I then studied at the Massachusetts Institute of Technology, and received a Ph.D. concentrating in econometrics.

132
MS. FRIEDMAN: Sorry, speak closer into the microphone, if you can, Dr. Mitchell.

133
DR. MITCHELL: Yes.

134
MS. FRIEDMAN: Thank you.

135
MR. RUBY: And Dr. Mitchell, if you could please, in brief, outline your employment history for the Board.

136
DR. MITCHELL: Following my graduate work, I was Assistant Professor of Economics at Stanford University, 1966, I believe, to 1971. I was at the Brookings Institution following that, at the Brookings Institution in Washington, D.C., and the Department of Health, Federal Department of Health. I then spent much of my career at the Rand Corporation, Santa Monica, California, a think tank, commonly designated.

137
During that time, I was a visiting professor at Stanford, and also at UCLA, and took a little more than a year's sabbatical to take a visiting position in Berlin, Germany, at the International Institute of Management.

138
Since 1994, I have been a vice-president at Charles River Associates, and am head of the office of Charles River Associates in Palo Alto, California.

139
MR. RUBY: What are your research fields?

140
DR. MITCHELL: They would be econometrics, the economics of health care, energy, economics of energy, and economics of telecommunications. I've published a number of academic and policy-related works in these fields, including editing and co-authoring five books, and quite a number of articles to professional journals.

141
MR. RUBY: And what's your last paper that you wrote?

142
DR. MITCHELL: The thing that I've most recently written is a chapter in the Handbook of Telecommunications Economics. It's in press currently. It's the second volume of that handbook series.

143
MR. RUBY: In particular, what research have you done with respect to cost allocation and cost modeling?

144
DR. MITCHELL: I've been involved in projects across several industries, beginning with the regulation of cable television and the cost of cable television systems. At several points in my career I've worked on costs of electricity generation and distribution, focusing particularly on allocation of cost by time of day, and the sensitivity of users to time-of-day pricing. In doing that, I worked in particular with the Los Angeles Municipal Local Distributing and Generating Company, LADWP.

145
In the telecommunications area, I, I believe it's fair to say, originated the first empirical study of the incremental costs of local telephone service. That was a study I did under the auspices of the California Public Utilities Commission, and collaborated with the two major local exchange carriers in California, who provided data and access to technical experts.

146
For mobile telephone networks, I provided analysis and testimony on behalf of Sprint PCS at the FCC, and also at state regulatory proceedings.

147
And in Australia, I have analyzed incremental costs of telecommunications services, a variety of services, that Telstra, the integrated national carrier, provides, and presented evidence at the National Competition Commission, the ACCC, and before the Competition Tribunal in Australia.

148
MR. RUBY: Not to put too fine a point on it, sir, you've been here when some of the witnesses for the CCTA talked about how important it was to deal with economics in the real world. Have you ever provided expert economic advice in the real world?

149
DR. MITCHELL: Throughout my career I have been involved in consulting and advising, first in the U.S., on quite a number of regulatory matters, but also in anti-trust and damages litigation, as an expert witness. And I mentioned I have done some research studies in collaboration, for example, with the California Public Utilities Commission.

150
MR. RUBY: Anywhere outside the United States?

151
DR. MITCHELL: Yes. I have been on assignment with the World Bank in several countries, on specific economic missions. I did a major study with collaborators for the European Union on interconnection policy and the costs of interconnection in Europe. I've provided testimony in the United Kingdom on telecommunications matters, also in Australia and New Zealand. And I've been engaged in studies in a number of other countries: Mexico, that I can remember, India, Malaysia, Thailand, Trinidad.

152
MR. RUBY: Thank you.

153
Yesterday Ms. Kravtin told the Board that there were standard texts and peer review journals in the economic field. Have you had any involvement with those kind of materials?

154
DR. MITCHELL: Well, I certainly make use of them in my research, and in my analysis for consulting assignments. The handbook is one of the standard references in the field. It's a multi-volume set covering most of the major disciplines in economics. And, as I indicated, I've contributed a chapter to the volume that's now in press.

155
MR. RUBY: And have you had any involvement in the peer review journals?

156
DR. MITCHELL: Yes. I, of course, have submitted, and had accepted, papers for publication in a good number of economics and related professional journals. I have served as a member of the editorial board of the Information, Economics and Policy Journal, an international journal. And I serve regularly as a reviewer on request from editors.

157
MR. RUBY: Thank you. As a housekeeping matter, maybe I can ask you -- we had a discussion yesterday with Ms. Kravtin about one particular book where I was asked to deal with it through your evidence, as opposed directly through her.

158
In forming your opinion in this particular matter, did you consult the Handbook of Game Theory, and, in particular, the chapter on cost allocation?

159
DR. MITCHELL: Yes, I have.

160
MR. RUBY: Mr. Chair, maybe a timely manner -- we didn't mark it as an exhibit yesterday on my acceptance that I put it in through Mr. Bridger, so if I may.

161
MR. KAISER: What are you proposing, to put the whole book in, or just that chapter?

162
MR. RUBY: Just the chapter. I've got copies of the chapter, and I'm happy to give them to my friends, as well.

163
MR. KAISER: Any objection, Mr. Engelhart?

164
MR. ENGELHART: Yes, Mr. Chair. I think I'll object. I guess the normal procedure, as I understand it, Mr. Brett, is that people put their evidence in. I did notice in Mr. Mitchell's testimony there was a footnote referring to the fact that certain results could be derived from game theory. It's there. We've all read it. I don't see the point of putting what I'm sure is a very fine textbook, or a chapter of a very fine textbook, into evidence. The evidence is there.

165
We've had an opportunity to file reply evidence and ask interrogatories about it, and I think if they're wanted -- if the EDA wanted to have a footnote referring to this textbook in this evidence they could have done so. But it just seems to me to be odd to be now putting in a chapter of a book now that none of us

have read.

166

MR. KAISER: Mr. Ruby, I'm not sure why you want to put this in, but if there's some particular aspect of this you want this witness to adopt, you should put it to him. You can show him book or you can go through the book or we could spend all day going through the chapter, but just throwing the book into evidence doesn't seem to me to be very helpful.

167

MR. RUBY: I quite agree. The reason I was doing it this way is purely because there was an objection yesterday to my dealing with it through a different witness. I'm quite content to deal with it at the end of Mr. Mitchell's direct examination, and if he makes use of it, to then take the Board to it. I just don't want to be left with referring to works that it may be difficult for the Board to get a hold of, and not have.

168

MR. KAISER: Well, let's deal with it on that basis. Thank you.

169

MR. ENGELHART: Mr. Chair, if I could make one other observation. Again, the process, as I understand it, is that parties put in their evidence in writing. There's an opportunity for reply evidence and an opportunity for interrogatories. We've read Mr. Mitchell's evidence with great care and attention. We have posed interrogatories. We have hired experts to put in reply evidence. If, in the course of his in-chief examination Mr. Ruby is going to substantially add to or supplement that in-chief evidence of Dr. Mitchell's, then I'm afraid we have to object, because we won't have had the chance to consult with our own game theory experts and reply our own game theory reply evidence, and ask interrogatories about game theory.

170

So I guess we'll have to wait to see where Mr. Ruby goes with this, but I'm just, I guess, cautioning Mr. Ruby that I'm concerned about this procedure.

171

MR. KAISER: Well, I think, as we said, Mr. Engelhart, we'll see what he does with it and if there's some surprise we'll deal with it at that time.

172

MR. RUBY: I'm certainly not intending to address anything that hasn't been covered before in this proceeding.

173

MR. KAISER: I assume that.

174

DR. MITCHELL: Mr. Ruby, could I just ask for a pen or a pencil? I got up here without one.

175

MR. RUBY: Sure. Thank you. Mr. Mitchell, could I ask you to, please, summarize your paper and your analysis in a nutshell.

176

DR. MITCHELL: I'll try to keep it a small nutshell.

177

We make three major points in the paper. First, this is analysis that is rooted in sound economic science.
We developed three benchmarks that have been proposed for fair cost allocation. These benchmarks can
be found in a standard encyclopedic reference series in economics. That series is one that you've just had
a discussion about, the Handbook of Economics and is edited by a nobeloriate. There are a number of
volumes. The rules that come out of that set of allocations includes those that have been put forward by
Professor Stephen Littlechild, who is one of the world's leading energy regulators, as well as an authority
on regulatory economics. So the first point is that this analysis of this particular problem that we'd done
flows directly from economic science.

178
Second, we have not been able to find any similar support for the CCTA model. Indeed, our reading of
that model is that the cost allocation model proposed by the CCTA violates the Littlechild conditions for
fair allocation.

179
And third, one must ask why, in the U.S. and also in Canada, regulators have allocated pole costs on the
basis of models that are similar to those put forward by the CCTA. The answer here is not that those
allocation rules that have been used in practice are fair, per se, but rather that policy priorities, and in
particular the desire to promote competition in telecommunications, have overridden the conventional
standards of fair cost allocation. In other words, those rules have been justified because certain policy
priorities were seen to be of overriding importance at that time and in those jurisdictions.

180
MR. RUBY: Dr. Mitchell, are your benchmark rules for fair cost allocation simply theoretical or
philosophical concepts or are they actually applied in the real world?

181
DR. MITCHELL: Oh, they're most certainly applied. They're applied in the most prosaic sort of
examples. They're applied in regulated industries, they're implied in public policy.

182
Maybe I could just try to illustrate the point, I'll give you two or three illustrations later, but imagine two
towns that seek to supply themselves from a reservoir and need water pipelines to get from the reservoir
to the towns. For some portion of the distance that the water has to be transported a common pipeline
will serve both of them. And that might be, say, a pipeline of 30 miles. Then you get to a point where the
pipeline needs to diverge because the towns are located in different parts of the province or the county.
And if I could just put numbers to this, town A is 2 miles from the common transport, and town B is
somewhat further away, 8 miles in the other direction. The question for the towns is clearly, it's
advantageous to have one pipeline as far as possible, but how should they share the costs?

183
And the textbook solution to this very simple problem -- maybe I could just draw it on the Board in a
moment -- is that the two towns would share the cost for the 30-mile pipeline equally, and then each of
them would pay its own cost for the private pipeline from this common resource to get the other 2 miles

to A or the other 8 miles to B. And this is the benchmark methodology that we basically propose.

184
We have some source of water. We have a 30-mile pipeline. And then A is up here, B is down here. If you want to put numbers to it, there's some costs per mile, something. But the key issue is how to divide the cost, 30. And the standard textbook analysis, but also the common sense and the rules that communities typically arrive in is divide 30 by 2. Each pays 15, and then plus 2 for A, and 15 plus 8 for B. So I think there's nothing mathematical particularly or elaborate or hypothetical about that. That's the way communities very frequently solve such problems.

185
Now, let's compare that model to the CCTA model. Yes, that model would have town A pay for the 2 miles of its dedicated pipe, and B would pay for 8 miles of its dedicated pipe, and then to that extent the two approaches are identical. But where they differ is the CCTA would have community A pay for only 20 percent of the common pipe, and town B would pay -- be paying the lions share or the 80 percent of the 30-mile pipe.

186
In other words, their justification, if you can call it a justification because we're talking about equitable allocation here -- is that since A uses only 20 percent of the dedicated resources of pipe transport, it should pay for only 20 percent of the shared resources that are in use. And that is the crux of the difference between an approach that is based in the economic science of cost allocation, and that put forward by the CCTA.

187
MR. RUBY: Thank you, Dr. Bridger -- or, excuse me, Dr. Mitchell. Another issue that came up repeatedly over the last few days is a comparison or trying to draw an analogy to work that's been done in other regulators, with respect to pole allocation. Would you be surprised if this Board came to a different conclusion regarding the allocation of pole costs than the CRTC or many of the U.S. regulators have come to?

188
DR. MITCHELL: Would I be surprised? No. That would not surprise me, because this matter, as I understand it, is being taken up de novo, and it means that the Board confronts squarely what standards of fairness should apply to the division of costs for a common resource.

189
As energy regulators, you may well have different objectives and different constituencies than a telecommunications regulator. And I believe you understand that, in the U.S., virtually all of the decisions that have been taken regarding pole attachment standards are constrained by the U.S. federal statute regarding pole charges, a statute that was adopted in order to promote the development of telecommunications, and, particularly, cable television. I'm not aware of a similar constraint that operates here in Ontario.

190
The second reason is that regulatory practice does evolve. If I go back to my graduate days at MIT in 1960, essentially, the world over, in the industrialized economies, rate-of-return regulation

and
cost-based regulation was the standard of the day. But we've moved on. We've learned about incentive-based regulation, the importance of having incentives in a limited-information, asymmetric
regulatory setting, and this is increasingly becoming the new standard and best practice of regulatory
practice.

191
I mentioned Stephen Littlechild a moment ago, someone who's very closely associated with the development of the concept of price gaps, and who has enunciated a fairness standard that we find
appropriate for this problem.

192
So it wouldn't surprise me at all if innovative regulators moved beyond the telecommunications-oriented
focus of the CRTC, just, for example, as the Alberta Board has done.

193
And third, I think for you to reach a different conclusion, that is, to adopt an unfair allocation, this Board
would need to conclude that there is a public policy justification that favours cable television firms and
cable television consumers, and requires the LDCs in Ontario, and their consumers, to bear a disproportionate amount of the common pole costs.

194
MR. RUBY: Thank you, Dr. Mitchell, for that nutshell of your views.

195
Now, it may be useful for the Board, and I'll ask you, if you can take us through how you reached those
conclusions.

196
DR. MITCHELL: Yes, I would be very happy to do that, if I can make the technology work for us.

197
MR. RUBY: Mr. Chair, I should advise you that Dr. Mitchell's prepared a PowerPoint presentation to
try and make this a bit easier for everyone. I have paper copies of it, as well. I'm quite
happy to provide those to the Board and the other parties here. I'm entirely in your hands.

198
MR. KAISER: That would be helpful, Mr. Ruby, if you could distribute the paper copies. Thank you.

199
Mr. Lyle, do you want to mark these as an exhibit?

200
MR. LYLE: Yes, Mr. Chair. We'll mark it as Exhibit E.3.1.

201
EXHIBIT NO. E.3.1: PAPER COPY OF THE POWERPOINT PRESENTATION OF DR. BRIDGER
MITCHELL

202
MR. KAISER: Mr. Ruby, before we proceed, and before Mr. Engelhart gets too exercised, does this
essentially summarize the evidence that's already been prefiled?

203
MR. RUBY: That is my understanding. Of course, Dr. Mitchell's the expert, but that's my
understanding.

204
MR. KAISER: Is that the case, Dr. Mitchell?

205
DR. MITCHELL: Yes.

206
MR. KAISER: Thank you.

207
MR. ENGELHART: Mr. Chair, the PowerPoint looks to me to be about as long as the paper, and looks to cover all the same ground. We've all read the paper. We've all understood it. I certainly have not objected to the helpful summary that Dr. Mitchell put before us, but it's not my understanding of the process of this Board that the in-chief evidence would involve, essentially, going through the entire evidence. And we have not presented our evidence that way. So I'm in your hands, but it strikes me that this is an inappropriate use of the in-chief examination.

208
MR. KAISER: I think, Mr. Engelhart, as long as it doesn't contain any new evidence, we'll let Mr. Ruby conduct his chief however he wishes.

209
MR. ENGELHART: Thank you.

210
MR. RUBY: Thank you, Mr. Chair.

211
Mr. Mitchell, I'm sure the Board would rather here from you than from me, so I'd ask you to go through your slides and your explanation.

212
DR. MITCHELL: Fine. And I'll try to move rapidly. I may skip over some slides if that allows us to --

213
MR. KAISER: Try not to repeat it in too great a detail. If you can summarize, that would be helpful.

214
DR. MITCHELL: Yes, Mr. Chair.

215
So the points I wanted to cover, in summarizing this report, deal first with economic requirements for fair cost allocation. And those topics are promoting economic efficiency, encouraging fairness and equity in the division of cost savings, and providing incentives for efficient investment and cooperative behaviour.

216
I mentioned there are policy considerations that come before the Board in taking this issue up. I just want to touch on what those are, to bring in the evidence from the market on how pole costs are allocated when private parties negotiate, and then provide the conclusions from this report.

217
I think it's quite clear, and common sense, that it's economically efficient to share resources when that reduces the total cost of production. And the economic problem, then, is to be sure that the prices that are charged to the users who are sharing the resource are consistent with that behaviour. And so

each user
should pay at least its incremental cost, the additional cost that it causes by joining the pole, by joining
the pipeline, and, at the same time, that none of those users pays more than the cost it would incur if it
built its own water-supply system, it's own power pole, or whatever.

218
Now, in the settlement agreement, I understand that those principles have been agreed to as minimum and
maximum prices, and so there's really no controversy at all here, but I just wanted to lay out that that does
flow directly from the economic science of cost allocation.

219
Similarly, this sets up a very simple standard for when there are, and when there are not, cross-subsidies.
One user, A, subsidizes user B, if A pays more than the cost it would incur by producing or using the
resource entirely by itself, with no cooperation.

220
I like to use an example of sharing a taxicab. And if one user pays for the entire cab, that does not create
a subsidy to the other passengers. They get a free ride, but they're not being subsidized, because A isn't
paying any more than he would have to pay by traveling by himself. So, in the economic sense, there is
no subsidy there.

221
But, of course, most of us looking at a shared taxicab would say, Well, that's not equitable, that's not a
fair way to deal with a cab, they ought to split those costs in some way. And that's the nub of it, how to
divide up the saving from taking one taxi instead of three. And it's that basic and that common-sense a
problem that the economics struggles with.

222
So we could look at the power pole with three users, and ask, who's subsidizing whom? And get the same
answer: One party could pay for the entire pole, in terms of all of the common costs of the pole, so longer
as each attacher pays for its dedicated space. Even if -- if 100 percent of the costs were paid by the power
company, or 100 percent were paid by the cable company, there would be no cross-subsidy. So
subsidization, given the standards you've set for minimum prices and maximum prices, doesn't really
come in as a real issue in this proceeding. It's already been taken care of by your "price at least equal to
incremental cost and price no greater than stand-alone cost" rule. We can set that one aside.

223
So the nub of the matter is, what benchmarks can we set out for allocating costs fairly? And, as I
indicated a moment ago, these benchmarks come directly out of the academic and professional literature
on cost allocation, but as I will show you, they have also been used in actual practical applications, and
indeed they are totally consistent with the taxicab experience that we all have.

224
The first benchmark is that when three users, or any number of users, make equal use of a common
support structure, they should share equally in that cost. And the second part of that is, additional costs
that one user, a particular user, imposes should be borne entirely by that one user. So shared costs are
shared equally, common costs are shared equally, and private or dedicated costs are borne in full by the

party that causes them.

225
A different benchmark is number 2. We look at what is saved by going in the cab together, by pooling resources, and split the savings equally among all of the parties, all of the users. Three people ride in a taxicab, and it would otherwise each cost them the same amount to take a separate cab, they divide the savings by three.

226
A third benchmark, a little different, is to add up what it would cost each of the parties to go it alone, the sum of the stand-alone costs, and say, What percent does each user account for that total? And then allocate the costs of the shared lower-cost resource, the single power pole instead of three separate power poles, allocate that total cost on the basis of the percentage shares they would have of going it alone.

227
Now, you might well ask, Well, what is the difference between these rules? How much guidance does this really give us? And it turns out that they're quite similar, and they will all satisfy a fundamental principle. But, as well, when I'm pointing it out on this slide is that we can look to actual experience, not regulatory imposed standards, but privately negotiated experience like getting in a taxicab. Or like a telephone company and a power company who have approximately equal market power in their respective markets, each one is a dominant player if not a monopolist in most if not all of the markets in which it operates, and they reach bargains without an outside regulator on how to divide the costs of a single pole because it's in their joint interests to save those costs.

228
Now, by looking to that experience and saying, What happens if you start from positions of equality, what kind of division do you get? What are people -- what do parties agree is fair? We can use that principle and take it over to a market in which there is not equal power and say the same principles should apply. We should treat people just as fairly in a market where there is unequal power as there is when they're on an equal footing. And the role of regulation may well be to insist that that standard be adhered to, so that the party with the dominant power cannot exercise an unfair allocation. But the standard of fairness is derived from a situation in which the parties are equally situated.

229
Now, Professor Yatchew and I enjoyed putting this example together because we're both musicians, very amateur musicians, I must say. He's a pianist, and he first started talking about a taxi, and I said, well, we'll have to change it to a cello, because we'll never get a taxi to carry a piano to the airport. So that's where we are.

230
So we have a trio that's travelling to the airport. A standard taxi costs $60 for a one-away fair, but because the cello has to go along, because we have to accommodate the cello, a station wagon is needed and that fair is $70. So you can see what happens. The violinist and the violist pay $20 a piece, the cellist pays all of the incremental costs, that extra $10 of getting the station wagon. So they've divided the common costs, the $60 of the cab, equally, and the cellist has paid all of his incremental

costs.
Benchmark rule one.

231
Same example, but apply rule 2. How much do they save by taking one cab rather than two standard cabs plus one station wagon? Well, there's the algebra, not even algebra, just ordinary forth-grade math. They'd spent $190 on three cabs. They save $120. They decide to pay the cab from the $190 that they would have to put in otherwise. They're left with the $120. They divide that by three. And so the total payments are $20 for a violinist or a violist, and $30 for a cellist. And so in this example, benchmark rule 2 and benchmark rule 1 give exactly the same cost allocation. But the in intuition, the motivation, you see, comes from the other side, how to save and enjoy the savings.

232
Benchmark rule 3. They pay on the basis of what proportion of the total stand-alone costs each is responsible for. And you can carry this through, but you can see that the result here is that the highest cost-causing traveller, the cellist, gets a relative bargain. He only pays $26, a little less than that, when you allocate by percentages of stand-alone costs, but this too could be judged to be fair. It's the case, in general, that if we allocate on the basis of the percentage of stand-alone costs, then the largest user, in the sense of the largest cost, will get a more favourable outcome than it will under benchmark rules 1 or 2.

233
And, in fact, in the rest of the examples I will stick with benchmark rule 1, a splitting of common costs and a full private burden of incremental costs for each user, which is the highest charge in this proceeding that would go to a power company. That is, benchmark rule 3 would produce a somewhat lower rate for the power company, a somewhat higher rate for the cable company than does benchmark rule 1. But both, in terms of economic principles, would be judged to be rates that meet a standard of fairness.

234
Now, I mentioned Stephen Littlechild a moment ago, and this is a study done in the late 1970s by Littlechild and Thompson. It's actually one of a series of papers that he has published and that have been widely cited subsequently. It came out of studying the question of how to fairly divide the cost of building runways at Birmingham airport in the United Kingdom. And somewhat similar but not identical problem to the one we have for poles, you have to have longer runways, and as I understand it, somewhat stronger concrete and supporting structures to land jumbo jets than, obviously, small, short take-off planes. But once you have a very strong, long runway, all the smaller aircraft can use it equally. Well, I mean they don't need any private additional costs.

235
So there are some differences in the details, but the principle or the rule that he enunciated is what I've quoted here. It's a little dense to read. So let's just look at it:

236
"The amount by which the charge to a larger aircraft exceeds that for a smaller one does not exceed the difference in costs of providing for the two types of aircraft."

237
And that really breaks down into two parts. Aircraft that have equal costs are charged equally, and the difference in charges between different types of aircraft are not greater than the difference in their costs. So, what this means is that the larger users, the higher-cost users, are not worse off relative to smaller users than they would be if they would separate runways, that is, build separate facilities.

238
Now, we can test Littlechild -- we can test different cost allocations for joint-use poles against this fairness rule, or even against our taxicab example. And so you see, as it's set out on the slide here, that the cellist should not pay more than his companions by more than $10, which is the additional cost of going to that greater capacity station wagon. So we're talking about relative rates here, and $10 is the maximum difference that this fairness rule would allow.

239
Now, if you go and look at benchmark rule 1, that's exactly what happens. The cellist pays $30, the other two passengers each pay 20, and the difference is that maximum amount of $10.

240
So a rule-1 allocation satisfies this standard of relative fairness that Littlechild has enunciated. And it turns out that rules 2 and 3 can also be shown to satisfy the standard of -- although, as I noted, rule 3 does favour the larger user somewhat. So this isn't rocket science, so I won't take us through the math, but you can see how this principle can be tested against particular allocations.

241
So, naturally the question arises: How does the CCTA cost allocation stand up against this principle? And the short answer is, it doesn't. It violates the fairness principle.

242
All of the users require the common resource, the minimum clearance and the buried portions of the pole. But the common costs of that part of the pole are disproportionately allocated to the users who require more dedicated space. This is the -- I think the term was "proportionate use" allocation in the previous testimony. And so, as a consequence, users who require very little dedicated space would pay only a negligible proportion of the common costs. That's back to our diagram here, and with proportionate use, only a small portion of the common costs are borne by this small user.

243
I might think of another example, just to really drive this home. The two towns that need to get water from a reservoir or some major transport line at the left of the diagram, they share a transport facility, a pipe, for 30 miles and then there are two spurs going out to towns A and B, a 2-mile pipe to A, an 8-mile pipe to B.

244
The standard cost allocation result: The fair allocation is that A pays for 2 miles, B pays for 8 miles, and then both parties split the 30-mile common pipe. It's really benchmark rule 1, just applied to this example. But the CCTA allocation would have, yes, A pays for 2, and B pays for 8, but for the common portion, A would pay only 20 percent, not its 50 percent fair share of the common pipe.

245
Okay. What other considerations come before you in dealing, finally, with the appropriate cost allocation? Well, we've mentioned market power issues, and it is possible that ownership of a resource, particularly a scarce resource, will convey some power and that that power could be abused. But this, of course, is the precise place at which regulatory oversight and intervention is appropriate, to set clear rules and to police them, so that abuse does not occur, notwithstanding the fact there is power. We definitely have market power in many cases.

246
Now, if, in spite of that, that is, with no actual abuse, there were economic benefits from ownership, then it would be appropriate for those benefits to be recognized in a fair cost allocation. But that, then, begs the factual question: Are there net benefits from owning a power pole? And here, if you look at the risks of owning a long-lived asset, investing capital into it, and not having a guaranteed client customer for some of those costs, there is an uncertainty about recovery of costs from the attachers for whom some of that capacity has been invested.

247
And my reading of the evidence is that, in this instance, that evidence does not support a justification for a higher-than-fair allocation because of ownership advantages. There are some advantages, some disadvantages, but I do not see the balance tipping to departing from a fair cost allocation.

248
Lastly, I said the final economic issue was to provide incentives. I think I can really pass over this very quickly. We want prices to be less than stand-alone costs, so we don't have duplicate facilities built when it's more cost-effective to share a pole. Very straightforward, the settlement rules provide for that. We also want to make sure that all of the prices together are sufficient to recover the costs of the pole, so that there will be reinvestment when it's time to replace the asset.

249
Well, I hope that lays out the crux of the analysis that we've done in more detail, certainly, in the paper. But now we turn to the policy issues.

250
Can some departures from these fairness standards be justified? And I submit that you, as regulators, need to address these questions in order to make such a departure.

251
Should the electricity users pay more than a fair share, that is, a share that satisfies the fairness standard? Should they pay more than that share of the costs of the support structures? What would be the policy justification of that departure?

252
Second, if resources need to be appropriated for the cable industry, should they be pursued within the electricity industry? Now, I understood from the testimony yesterday that the CCTA is not making a case that additional resources are needed from within the electricity industry. But I may not have fully appreciated that. When I read the paper - I thought that was in the Kravtin-Glist paper - that was one of the points that was being made. So that's an open question to me.

253

And, finally, what weight should be assigned to the policy goals and priorities for the electricity industry,
and the provision of power in Ontario, within this sector of the economy, as compared with telecommunications, cable television, or the industries of other attachers? And I think you would have to
affirmatively find some justification to go away from standards in terms of their public policy benefits or
objectives.

254
Now, I said lastly I would turn to evidence from the market about cost allocation in this particular
industry. And we've had a number of decades of experience of telephone carriers and power companies
privately agreeing to share their poles, and to divide the costs of those poles. And as we know, the
division typically ends up between 55 and 60 percent of the shared costs being borne by the power
company. That's consistent with the power company having higher dedicated costs than the telephone
company, but still a large proportion of the pole costs being common to the two users.

255
So, these rates, given what we know about the additional costs of power and the additional costs of cable
-- of telephone attachments, are consistent with all three benchmarks, and are consistent with the
Littlechild rule.

256
I take this as very strong factual evidence from the real world that the cost allocation rules that have been
developed from the point of view of basic principles are borne out by actual self-interested behaviour of
economic actors, who are acting rationally. And for a economist, that is one of the strongest tests of a
theory, that it be borne out by the reality of the market.

257
Again, if we check the evidence against the CCTA model, we find that empirical experience does not
support the allocation that is being put forward in that model. In a two-user pole, a telephone company
and electric power, which is the prototype of the experience I've just been talking about, the CCTA
model would predict a share of about 31 percent, based on Mr. Ford's diagram. And yet, as we've seen,
companies routinely have negotiated 40 to 45 percent as the telephone company's share.

258
So let me try to wrap this up with a final set of slides on cost allocation. It's important that a regulator set
rules for upper and lower bounds. They're already agreed to in the settlement, I think we can move on
there. It's important, essential, that you set rules that protect against abuse of market power and ensure
that affiliates who benefit from or could benefit from market power are not advantaged as a result of that.
So there is definitely a regulatory role there.

259
And third, it's appropriate, and as I understand it, really required, logically, in your proceeding, that you
reach decisions about what methodology should be used for efficient and fair cost allocation to guide
whatever outcomes and further regulatory processes will occur. That there be an established
methodology. And in this paper, we have suggested one can look very clearly to the economic science
supported by empirical experience to see what rules should guide that methodology.

260

Those are the three benchmarks: Allocate common costs equally among all the users, and leave individual users responsible for their private additional costs; or second, divide the savings equally among the multiple users; or, third, share the total costs in proportion to the stand-alone costs. Each of those benchmarks satisfies basic fairness principles, and the rates that come from a market in which parties are equally situated and can bargain in good faith, are consistent with those economic standards.

261

Now, all of this will then finally take you to, How do you do it in practice? Clearly you need some real-world data of some type. But the framework, the benchmarks that we've suggested, can be applied to something as simple as the back of the envelope taxicab, which we can just work out in our head, or a one-page diagram in which we make additional assumptions that the costs, the only costs that need to be considered are a cost-per-foot of pole, which is a simplification, but it may be a useful simplification in lacking other data. Or it can be taken all the way to looking at the books and embedded costs and operating costs of individual utilities one by one, and applying the rules there. Or something in between, some averaging process. The same rules, the same principles, would be equally applicable in any of those situations.

262

How you carry it out, I think, will be something of a trade-off calculation. How good are the data that are available, how much difference is there from one company to another, and so on. Those are practical implementation details. But the principles are absolutely clear, and they're fully applicable to whatever information you finally have available.

263

Policy concerns, electricity consumers certainly need to be taken into account every bit as much as telecom or cable consumers. It is my opinion that, beyond ensuring that there is not an exercise of market power that causes abusive behaviour, detailed regulation is not necessary in this situation, but a clear standard is the essence of getting to a fair rate. And that the Board is in a position to enunciate that and require that affiliates of pole owners operate on the same basis, receive rates on the same basis.

264

So, in conclusion, the conclusion is that there is a common sense to allocating common costs. And it's the taxicab experience. Now, let me try to explain why the CCTA approach, which may sound reasonable, which is to say, Well, let's share costs in proportion to the private costs of dedicated space, when is that appropriate and when not? Well, if an increase in private costs causes an increase in common costs, then there is a direct proportionality.

265

And an example I suggest here is as you go to larger stores in a mall, there's need for more resources that are approximately in proportion to the amount of foot traffic. The number of shoppers, the hall space and the parking space needs to get bigger, and so a large store causes more common costs and should fairly pay a larger proportion, a larger absolute amount for the common costs for parking than a coffee shop.

266
But this proportionate approach is not appropriate for allocating common costs of poles. And you can see
that we don't do that in many cases. Telephone service for local telephone service is priced at a fixed fee
per month, independent of how much it's used. There's a sharing of the common cost there that is on a
per-user basis, independent of usage. Indeed, cable television service, basic cable, is priced at a fixed fee
per month, per user, per connection, regardless of how many hours of television is used. Common costs
are not proportional to usage of the television set. No, they're shared equally across the users. And a
sharing to water pipeline or natural gas pipeline would be a similar thing, as this example suggested.

267
And joint-use poles, the common costs of clearance and buried portions, are in this sense caused equally
by all users. Those costs don't go up when you add another foot to accommodate more communications
users, or you add more space at the top to accommodate additional powerlines. The common costs
remain the same. They're not proportionate to the amount of private dedicated costs to serve individual
users. And so, in this type of example, an equal division of common costs, or the very similar benchmark
2 principle of splitting the savings or working in proportion to the total of stand-alone costs, are the
appropriate fair principles.

268
And I think with that -- I'm sorry it's taken so much time, but I hope I've been able to distill the essence of
this work -- I can bring it to a close.

269
MR. RUBY: Thank you, Dr. Mitchell. And Mr. Chair, those are my questions in-chief.

270
MR. KAISER: Thank you.

271
Mr. Engelhart.

272
MR. ENGELHART: Thank you, Mr. Chair.

273
CROSS-EXAMINATION BY MR. ENGELHART:

274
MR. ENGELHART: Dr. Mitchell, could you refer to the response by the EDA to interrogatory 9
posed by the CCTA.

275
DR. MITCHELL: I'll need some documentation to do that, but I have --

276
MS. CHAPLIN: I'm sorry, Mr. Engelhart, can you give me that reference again so I can find it as
well?

277
MR. ENGELHART: Yes, it's the EDA response to CCTA Interrogatory No. 9.

278
DR. MITCHELL: Do you have a page number?

279
MR. ENGELHART: Page 17, sir.

280
DR. MITCHELL: Thank you.

281
MR. ENGELHART: So, in this question, the CCTA posed to you, the question was:

282
"Several theoretical methodologies are described in section 4.2. However, other than the reference to the AEUB at page 24, line 2, and possibly the description of the approach used by Maine, there's no indication in the evidence that such theoretical methodologies have been used by the regulators..."

283
And asks you for any additional examples.

284
In your response, you say, second paragraph:

285
"We are not aware of other examples where these methodologies are specifically applied by telecommunications regulators."

286
I guess the question wasn't confined to telecommunications regulators. Are you aware of any other examples where any energy regulator, or any other regulator, applied these methodologies?

287
DR. MITCHELL: Let me -- yes, I believe you're correct that the response provided here was specifically to telecommunications regulators.

288
But, going beyond that industry, the paper to which I referred shortly ago by Stephen Littlechild was an application of these principles by - I'm not sure exactly what the authority was - but the authority that constructs and operates the airport in Birmingham, England. And that's a very completely worked-out example of that type of cost allocation based on fairness principles.

289
MR. ENGELHART: But no other energy regulators have applied these methodologies?

290
DR. MITCHELL: Well, the pricing of segments of gas pipelines appears to be consistent, in terms of the way the rates are developed, with these methodologies. Now, I have to say that, from my own knowledge, I have not studied the actual development of those rates so I can't say that that's how they came to be applied by the regulator, but they do appear to satisfy the same standards of fairness.

291
MR. ENGELHART: Now -- thank you, Dr. Mitchell.

292
Now, in your evidence, and in your presentation to us today, you cited the 60/40 split of ownership which is common between phone companies and electric companies as evidence for your propositions. What about your client? What about the members of the EDA? Do they have a similar cost-sharing arrangement with Bell Canada?

293
DR. MITCHELL: I don't know the specifics of their arrangements.

294
MR. ENGELHART: So you wouldn't know whether the EDA members have joint-use agreements, and you wouldn't know whether those agreements are also on a 60/40 basis.

295
DR. MITCHELL: No, I don't.

296
MR. ENGELHART: With respect to the arrangements that you are aware of, would you agree with me that they were entered into at a time period where both the electric distributors and the phone companies were subject to rate-of-return regulation?

297
DR. MITCHELL: Well, I'm sure you're correct for early ones in the period. I don't know how recent the most recent agreements are.

298
MR. ENGELHART: And, as a economist very familiar with the rules of telecommunications and energy regulation, you would be familiar with the Avrich Johnson effect, wouldn't you?

299
DR. MITCHELL: Yes, Mr. Johnson was a colleague of mine.

300
MR. ENGELHART: And that -- can you explain to the Board what the Avrich Johnson effect says, or what that principle stands for?

301
DR. MITCHELL: The Avrich Johnson analysis is concerned with the incentives, two types of incentive; one, to invest in regulated assets, and two, to price the services from those assets, and asks how a guaranteed-rate-of-return regulatory framework would affect those two incentives.

302
MR. ENGELHART: So the Avrich Johnson effect, and, indeed, the theory of rate-of-return regulation, holds that rate-of-return-regulated firms have an incentive to have assets in their rate base. And, in fact, the reason why regulators all over the world have moved from rate-of-return regulation to price-cap regulation is because they're worried that with the rate-of-return regulation you have such an incentive to have assets in the rate base that you end up gold-plating, that you end up having too many assets in the rate base. Would that be a fair summary?

303
DR. MITCHELL: It's one of the effects that can result from that type of investigation, not under all circumstances. But that is one of the focuses of the Avrich Johnson paper.

304
MR. ENGELHART: So, if we have two rate-of-return-regulated entities bargaining over how much poles each one owns, and both are rate-of-return-regulated and both have an incentive to have more assets because of the Avrich Johnson effect, wouldn't you think that the result of that negotiation would be distorted by the rate-of-return regulation, and might not be a valuable piece of data for your analysis?

305
DR. MITCHELL: Well, I believe I'm agreeing with you, your assumption here, that both of those monopoly or dominant providers -- each one of them is rate-of-return regulated; is that correct?

306
MR. ENGELHART: Yes.

307
DR. MITCHELL: Yes. So they're subject to similar incentives under the pricing and recovery formulas that they have. In that situation, I would not expect a particular distortion in the percentage-sharing that results.

308
MR. ENGELHART: Are you aware that, in Canada, since the phone companies have moved from rate-of-return regulation to price caps, that many of them, or some of them, have entered into negotiations to try and sell their poles to the electric distributors?

309
DR. MITCHELL: I'm aware of some, yes.

310
MR. ENGELHART: Now, let's return to the EDA members. If you could have a look for me, please - and we'll have to get you the document, I realize - but appendix B to the CEA interrogatories, pages 9 to 11. So that's appendix B to the CEA interrogatories, pages 9 to 11.

311
MS. FRIEDMAN: One moment, Dr. Mitchell. We'll get that for you.

312
MR. ENGELHART: So at page 9, for example, if I could have you turn to it, there is a company by the name of Great Lakes Power. And if you would look in section B there --

313
DR. MITCHELL: Just a moment. I'm not yet to that point. Oh, it's on a heading. Yes, I see it.

314
MR. ENGELHART: Yes. Thank you. If you look in section B, "Communication Attachments by Parties," they have "cable companies, fiber companies, telecom companies, independent telephone companies, other." Then there's a heading called "Special Cases. Joint-use telco partner, 8,175 poles for Great Lakes Power." Does that sound to you like Great Lakes Power has a joint-use, shared-cost ownership agreement with a telco partner?

315
MS. FRIEDMAN: Mr. Engelhart, for my benefit, can you repeat that question? I missed it.

316
MR. ENGELHART: Yes. Well, we have Great Lakes Power that has 8,175 joint-use telco partner poles. Over on the page, we have Ottawa Hydro with some, over on the next page, Orillia power. So my question is: Does that look like these are not attachments of the type that cable companies are doing, does that look like these are attachments of a phone company that has entered into a joint-use, cost-sharing arrangement of the 60/40 type that you described in your evidence, Dr. Mitchell?

317

DR. MITCHELL: From the material in front of me, I couldn't say.

318
MR. ENGELHART: Okay. Have you had an opportunity to review the settlement agreement in this proceeding?

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DR. MITCHELL: Only in very cursory form.

320
MR. ENGELHART: I wonder if -- well, let me read it to you, but if you want me to have the document put in front of you, I'd be happy to do so. I'm reading to you from section 2 of the settlement agreement:

321
"All parties agree as follows --" Oh, someone's bringing it to you. Thank you, counsel. That's at page 4 of the settlement agreement:

322
"All parties agree as follows: If the Board does set conditions of access, these conditions should apply to access to the communications space on an LDC's poles by Canadian carriers as defined in the Telecommunications Act and cable companies; provided, however, that these conditions shall not apply to joint-use arrangements between incumbent local exchange carriers and hydro distributors that grant reciprocal access to each other's poles."

323
So does that sound to you like at least some of the electricity distributors in this proceeding have joint-use arrangements that grant reciprocal access to each other's poles?

324
DR. MITCHELL: Well, it certainly allows for the possibility. Whether the parties have such poles, I can't determine from this statement.

325
MR. ENGELHART: Okay. So, you've talked about these kind of reciprocal-access agreements in your paper and in your discussion with us this morning. Are you generally familiar with how these arrangements work?

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DR. MITCHELL: Only in the most summary form.

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MR. ENGELHART: Well, let me ask you then, and we'll get you the page, to have a look at paragraph 26 of the CEA evidence at page 11. Now, I'll read to you from paragraph 26:

328
"Some electricity distributors and the local incumbent telephone companies have entered into agreements for the joint use of their poles, agreeing to construct poles to a mutually agreeable standard to accommodate both types of facilities and sharing up front the capital costs. Importantly, none of the electricity distributors and telephone companies noted below pay fees to access the poles of the others, because each incurred the capital cost of constructing the joint-use poles they own, unlike the companies that have constructed virtually no poles of their own."

329
Does that seem to you to be a fair summary of how these joint-use agreements between phone companies

and electrical distributors work?

330
DR. MITCHELL: As I said, I haven't reviewed individual agreements and have only a summary understanding of them. So I don't think I could speak to the fairness or completeness of this paragraph, to that, but I would take it at face value.

331
MR. ENGELHART: Well, let's take a look -- let's try and summarize to see if we have the same understanding of the way these agreements work. So the electrical distributor builds 60 percent of the poles in an area, the phone company builds 40 percent of the poles in the area. The electrical distributor makes sure that there's space for the phone company, the phone company makes sure that there's space for the electrical distributor. And then each one uses the poles of the other one without any further money changing hands. Is that the general idea as you understand it?

332
MR. RUBY: Mr. Chair, if I can be of assistance, I'm not sure it's a fair question to put to this witness a general statement when he said he's got a general understanding, when, in fact, there is on the record of this proceeding at least one, that is the Hydro One agreement with Bell Canada. So, if Mr. Engelhart wants to ask Mr. Mitchell a question about that, and I'm not even sure if he's read it or not, that might be preferable than to asking sort of general concept statements.

333
MR. KAISER: I think the question is, Mr. Ruby, whether this witness knows anything about this at all. And if he doesn't, if he has no knowledge of this particular Ontario situation, then he should just say so.

334
DR. MITCHELL: Well, I may have scanned over the particular agreement, joint agreement, counsel mentioned but I don't recall the specifics of it, the specific idea.

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MR. ENGELHART: But Dr. Mitchell, in both your paper and your presentation this morning, you indicated to us that the presence of these 60/40 -- and indeed in the interrogatory response I referred you to, the presence of these 60/40 cost-sharing agreements was a very important data point. Are you not aware, in the examples that you've cited of these 60/40 sharing arrangements, what the terms of the agreement are in broad terms?

336
DR. MITCHELL: Well, I'm aware of them in broad terms, but not of this particular agreement and not individual agreements.

337
MR. ENGELHART: Sure, but of the 60/40 agreements that you cite in your evidence that you talk about, I'm reading from your presentation this morning:

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"These negotiated 60/40 cost allocations are consistent with the fair cost allocation benchmarks we've

proposed."

339
DR. MITCHELL: Mm-hm.

340
MR. ENGELHART: So, when you say that, what's your understanding of how those -- not the ones in Ontario, necessarily, but the 60/40 cost allocation agreements that you've talked about, what's your understanding of how they work?

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DR. MITCHELL: Well, my understanding is that the -- at the end of the day, about 60 percent of the costs of all of the poles included between those two companies is borne by the power company and about 40 percent by the telephone company. How those individual capital expenses are arrived at in sharing, I don't know detailed knowledge of those particular arrangements.

342
MR. ENGELHART: No, I don't think I'm asking you about that. So we're in agreement that 60 percent of the costs are paid by the power utility, and 40 percent are paid for by the phone company. But what does the phone company get? What do they get for shelling out 40 percent of the poles? What do they get in return?

343
DR. MITCHELL: They are able to attach their cables to all of the poles covered by the agreement.

344
MR. ENGELHART: Right. And what do the power companies get?

345
DR. MITCHELL: They are attaching their cable and equipment to the same, or potentially the same, poles.

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MR. ENGELHART: And so, if the power company didn't have space on their poles for the phone company or the phone company didn't have space on their poles for the power company, these agreements wouldn't last too long, would they?

347
DR. MITCHELL: I'm not sure that would cause the agreements to discontinue, but it might require further agreements or supplementation for new poles or whatever the circumstances are. I would agree that that would not be a complete solution for the two companies, if there were not space for both of them.

348
MR. ENGELHART: Right. So your understanding generally, with these agreements that you talk about in your evidence as they occur throughout North America, is that each party makes sure that the other party has the space they're going to need. That's the essence, really, of these joint-use agreements, isn't it?

349
DR. MITCHELL: Yes. I don't know that that would mean that in every pole there would be a need for both parties to attach. So I would think your statement would have to be construed in terms of typical poles or most of the poles in the arrangements, or whatever. I wouldn't necessarily --

350
MR. ENGELHART: I think we could say all of the poles covered by the joint-use agreement would

have the capability of joint use; would you agree with that?

351
DR. MITCHELL: I would have to see the agreements before I knew that.

352
MR. ENGELHART: Okay. So assume for me that some of the EDA members in this province have joint-use agreements with the phone company, with Bell Canada. And assume for me that those agreements require the phone company to build 40 percent of the poles and the electrical distributor to build 60 percent of the poles, and then each one can use the space on the other one's poles and on their own poles. You're with me?

353
DR. MITCHELL: I'm with you on the assumption.

354
MR. ENGELHART: Okay. So if that state of affairs exists in this province, would you agree with me that the electrical distributors are going to have to build a communications space and a separation space on each of those joint-use poles, whether the cable television company attaches or not?

355
DR. MITCHELL: Well, they would have to provide space sufficient to accommodate -- the power company would have to provide space to accommodate the communications -- the telephone company, and vice versa.

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MR. ENGELHART: And we've heard evidence in this proceeding that the standard communications space is 2 feet and the standard separation space is 3.25 feet. Have you heard that evidence?

357
DR. MITCHELL: Yes.

358
MR. ENGELHART: So, would you agree with me that whether the cable company attaches or not, an electrical distributor with one of these joint-use agreements with Bell is going to have to build 5 feet of extra pole and install it, 2 feet of communications space and 3.25 feet of separation space?

359
DR. MITCHELL: As compared with -- you say extra, as compared with what?

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MR. ENGELHART: A stand-alone power pole where there is no provision being made for Bell Canada.

361
DR. MITCHELL: Well, as compared with a stand-alone power pole, it would have to build, as I understand it, a higher pole to accommodate the communication -- the telephone company cables. And I would certainly not put myself forward as knowing what the numbers would need to be, but I understand it would be higher.

362
MR. ENGELHART: So, if you accept for a moment that the separation space is 3 feet and that the communications space is 2 feet -- or whatever the numbers are, whatever the numbers are, that you need for a communications space and a separation space,

would you agree with me that whether the cable company uses it or not, an electrical distributor with such a joint-use agreement with a phone company will have to build that space into its poles?

363
DR. MITCHELL: Well, it will have to build into its space on the poles whatever amount of communications space and separation space is necessary to satisfy the joint-use party.

364
MR. ENGELHART: Right. So when you said to us this morning that there's an uncertainty that the electric utility will recover the cost of these -- of provisioning for these additional attachments, that's not really true, is it? Doesn't the electrical distributor know for a fact that when it builds that 5 feet of communications space into its pole it's getting a return, and that return is the ability to use the 40 percent of the phone poles out there.

365
DR. MITCHELL: I'm sorry, could you just repeat the last sentence there?

366
MR. ENGELHART: Sure. Let me rephrase it slightly. Say we have 100 poles in a territory and the power utility has 60, the phone company has 40. When the power utility puts the extra 5 feet of space into its 60 poles, they're making an investment. And the return on that investment is their ability to use the 40 telephone poles; is that not correct?

367
DR. MITCHELL: Well, in the agreement they obtain a benefit of using the telephone company constructed poles for power line attachments. I'd go that far. Whether you construe that as a return on investment, that requires some consideration.

368
MR. ENGELHART: Well, let me try again. If I could have you refer to page 15 of your presentation this morning, the bullet that I was referring to. In the second bullet, the first sub-bullet, you say that:

369
"But ownership imposes economic risks not borne by cable attachments. Uncertain recovery of attachment's additional costs due to vacancy or technological change."

370
I'm suggesting to you that that's not really true. There is no uncertain recovery of the additional costs of that communication space and separation space. There's a very certain recovery, it's the use of the 40 telephone poles. They're building the communications space for the phone company so that they can put their electrical equipment on the phone company poles in a 60/40 ratio; isn't that right?

371
DR. MITCHELL: In the joint-use agreement, as you've characterized it, they obtain the right to put power equipment on telephone-owned, telephone-constructed poles, yes.

372
MR. ENGELHART: So they don't have any risk due to vacancy or technological change, do they? They don't actually care whether the phone company comes onto their poles or not. Their benefit for this construction is paid for whether the phone company uses their pole or not because they get to use the phone company poles; isn't that

right?

373
DR. MITCHELL: They do get to use the telephone company poles.

374
MR. ENGELHART: So would you agree that, in the circumstance where there is a joint-use agreement of the type we've talked about, ownership does not impose economic risks because there is no risk due to vacancy or technological change?

375
DR. MITCHELL: With respect to telephone attachments in joint-use agreements, that investment is counter balanced by the right to attach to the counter-party's poles, or the power company.

376
MR. ENGELHART: Right. And would you agree with me -- I asked this question a little while ago, I'll ask it again -- would you agree with me that if the cable company comes along or not, the extra costs for the electrical distributor are zero. The electrical distributor has to build the communications space and the separation space whether the cable company comes along or not. So whatever money the cable company pays to the electric distributor is all pure incremental revenue. Would you agree with that?

377
DR. MITCHELL: No.

378
MR. ENGELHART: Why not?

379
DR. MITCHELL: Well, the money the cable company pays to the power company is incremental revenue, I amend my answer, but that's not without costs to the power company.

380
MR. ENGELHART: Oh. Where's the cost?

381
DR. MITCHELL: Well, there are basically two types of costs here. There's providing additional space on the pole and there are various operating costs incurred by the power company at accommodating that use.

382
MR. ENGELHART: I take your point on the operating costs. Quite right. But let's focus on the extra cost for the pole. Where is there extra cost for the pole when the power utility has to build the communications space and the separation space pursuant to the joint-use agreement?

383
DR. MITCHELL: Are you assuming that all of the power poles in this joint-use agreement have spare space to accommodate cable attachments?

384
MR. ENGELHART: Well, what we've heard in this proceeding is that the traditional communications space is 2 feet and the traditional distribution space is 3 feet. So I suppose a power company could buy a 39-foot pole that would just have a foot for the phone company, but I don't think they sell 39-foot poles. I think you would have to buy a 40-footer and cut off a foot.

385
So, yes, I'm saying that once -- I'm suggesting that once you -- unless you know something that I don't know, that once you allow for communication space and separation space, there is enough room for the phone company and the cable company on the communications space.

386
MR. RUBY: With respect, Mr. Chair, Mr. Engelhart may not have been here, but that wasn't the evidence that he's putting to the witness that's gone before. Mr. Ford made it very clear that his 2 feet was an assumed space, and Mr. Wiebe went, I think, at great length to talk about how much dedicated space that space actually could be. So I don't mean to rehash it all, but Mr. Engelhart is not putting evidence to the witness. If he wants to put an assumption that's fine, but he should put it that way.

387
MR. KAISER: Thank you.

388
MR. ENGELHART: Well, I can find the reference. It might take me a moment, but I'll find the reference.

389
MR. KAISER: Mr. Engelhart, would this be a convenient time to break for lunch, and you can come back to this after?

390
MR. ENGELHART: Yes. Thank you very much, Mr. Chair.

391
MR. KAISER: Back at 2 o'clock.

392
--- Luncheon recess taken at 1:09 p.m.

393
--- On resuming at 2:09 p.m.

394
MR. KAISER: Please be seated.

395
Mr. Engelhart.

396
MR. ENGELHART: Thank you, Mr. Chair. Just before we broke I said that I would provide the reference for the 3 feet of separation space and the 2 feet of communication space. I'm happy to just put that into the record.

397
If we look at the model agreement, schedule E, "Financials," of the evidence of the EDA, on page 3 of that document, under the heading "Allocation Rates" and under the subheading "Separation Space," the text reads:

398
"Published utility and CSA standards specify a minimum separation of 3.25 feet at the pole between power and communications conductors."

399
Over the page, on page 4, under "Communications Space," it says:

400
"2 feet of space on the basic joint-use pole is allocated for telecommunications attachments."

401
And yesterday, as we discussed with Mr. Wiebe, the evidence of the Canadian Electricity Association says, on page 6 -- sorry, schedule 3 of that document. It says on page 6, in the middle of the first paragraph:

402
"The most common amount of pole space allocated to support communications wires and equipment is 600 millimetres."

403
Having put that on the record, I'm prepared to move to a new area of my questioning.

404
I wonder, Dr. Mitchell, if you could have a look at the photos that the CCTA provided in response to CEA Interrogatory 7 -- the first four photos, perhaps.

405
MR. RUBY: Mr. Engelhart, maybe you would be kind enough to put the good photos to Dr. Mitchell.

406
MR. ENGELHART: Thank you, Mr. Ruby. I will.

407
Now, the first photo is a Hamilton Hydro pole, and can you see that there is a City of Hamilton streetlight on that pole?

408
DR. MITCHELL: I see a streetlight.

409
MR. ENGELHART: And under your methodology, should the owner of the streetlight be responsible for a per-capita share of the common cost of the poles?

410
DR. MITCHELL: Would you first tell me what you mean by per capita? That's not a term that I have used.

411
MR. ENGELHART: Well, as I understood it, you felt that, with telephone and cable and power on the poles, each should bear one-third of the costs -- of the common costs. Do I take it that the -- if there was a fourth owner, the light standard owner, that each, including the light standard owner, should pay one-quarter of the common costs?

412
DR. MITCHELL: In this case, the streetlight owner is a separate company or organization, unaffiliated with the three parties you've identified.

413
MR. ENGELHART: Certainly separate, yes. In this case, it's the City of Hamilton.

414
DR. MITCHELL: And help me on the facts here. Hamilton Hydro is a municipal company of Hamilton? So it's the same political or economic organization?

415

MR. ENGELHART: I think in some cases - and I can't speak about Hamilton - in some cases, the municipality owns the utility; in some cases, they own a portion of the utility; and in some cases, they do not own the utility.

416
DR. MITCHELL: In Hamilton?

417
MR. ENGELHART: I don't know the facts of Hamilton, I'm sorry.

418
DR. MITCHELL: Well, I don't either.

419
MR. ENGELHART: Does that make a difference to your answer, sir?

420
DR. MITCHELL: It may.

421
MR. ENGELHART: So let's assume for a moment that Hamilton Hydro is not owned by the City of Hamilton. Would you believe, in that case, that the owner of the light standard should pay for one-quarter of the common cost?

422
DR. MITCHELL: Well, I think fairness principles would indicate that an additional unrelated attacher, user of a common resource, should bear a share of the common cost.

423
MR. ENGELHART: And would that share be one-quarter?

424
DR. MITCHELL: That might well -- might well be in that case, with four users.

425
MR. ENGELHART: And does it make a difference if the municipality is the owner of the utility?

426
DR. MITCHELL: Well, of course this question at bottom goes to how to measure, or how to identify, distinct users that participate in the sharing of a common resource, what we are going to call a user. They could be companies. They could be individual strands of wire. We could count affiliates separately from principal companies.

427
And so there's not a single answer to that, in terms of the basic principles of fair division, until you decide how to classify individual users, individual attachments or participants in the common resource.

428
MR. ENGELHART: So, if this Board accepts your methodology and incorporates it into its pricing and cost-allocation procedures - I think you've told us that they would need to allocate one-quarter, or something like one-quarter, of the common costs to a separately-owned electrical utility - would this Board need to allocate a portion of the common costs, i.e., a quarter, to a wholly- or partly-owned subsidiary of the city?

429
DR. MITCHELL: Where the city, the municipality, is the power company.

430

MR. ENGELHART: Not the power company. The power company is a separate statutory entity, a separate corporate entity, with its -- and, as we've heard evidence today, they're now business corporations, with a mandate to behave as business corporations. But, in some cases, the shareholder is the municipality.

431
So, is it your advice to this Board that in those cases the allocation would be different?

432
DR. MITCHELL: Well, I have to preface anything I say here by just not being familiar with the organizational and public organization details, either of Hamilton or other Canadian situations. And I think this is a point on which some judgment would be required by the Board.

433
But, in principle, it strikes me as a question quite similar to whether a telephone company and its affiliate should be counted as a single attacher, if they have two cables, one for telephone and one for high-speed Internet or some broadband service, or counted as a single entity, in terms of fair sharing of the common space on the pole.

434
MR. ENGELHART: And what's the answer to that? If Bell Canada bought Rogers, would they then count as one instead of two?

435
DR. MITCHELL: You could make a case for that.

436
MR. ENGELHART: At least in the case where they are separate entities, then, I take it that this Board would need to do an inventory of the number of light standards on the poles, and reduce cable's share of the common costs, accordingly? Would you agree with that?

437
DR. MITCHELL: Well, I think the implementation of any standards set by the Board will depend on what procedures they find appropriate. Whether the Board needs to do it, whether companies can report their own statistics, whether some average can be adopted, there would be many ways to actually go into the facts of the matter.

438
MR. ENGELHART: I'd like to direct you, please, to the CEA response to Energy Probe Interrogatory 10.

439
DR. MITCHELL: Energy Probe Interrogatory 10?

440
MR. ENGELHART: Yes, sir.

441
DR. MITCHELL: I have that.

442
MR. ENGELHART: If you look at number B: "Other current uses of which the CEA is aware include: Municipal streetlights, environmental measurement equipment, air ambulance landing lights, hazard signals, and antennae are attached to power poles, alleviating the need to construct support structures to support only those facilities."

443
Would you agree that under your principle the environmental measuring equipment, the air ambulance
landing lights, the hazard signals and the antennae should also be allocated a share of the common costs?

444
DR. MITCHELL: Under the principle, yes.

445
MR. ENGELHART: Now, on page 11 of your evidence, you state that you are not sure that there are
advantages to pole ownership, and you said the same thing this morning. I wonder if I could take you, sir, to the EDA model agreement, which was filed as part of this proceeding by the EDA.

446
DR. MITCHELL: Do I have that counsel?

447
MR. ENGELHART: Yes, it's appendix 2 to the EDA evidence.

448
If you have a look, sir, at "Article 7, approval of permits," which is at page 8, you will see that a cable
operator has to apply -- Article 7, page 8. A cable operator has to apply to use the pole, has to pay for
permit approval and inspections, and cannot install its facilities until the permits are approved. Would
you consider that to be a disadvantage of tenancy?

449
DR. MITCHELL: Just a moment, Mr. Engelhart. I'm on page 8 but I haven't found you, yet.

450
MR. ENGELHART: You see the heading "Article 7, approval of permits?"

451
DR. MITCHELL: Yes. What paragraph is it?

452
MR. ENGELHART: Well, take a look at the first paragraph: "The licensee has to inform the owner
that they intend to seek permission to affix and maintain their attachments. The
licensee will provide to the owner such preliminary information as is requested by the owner. At the owner's sole discretion the owner may then arrange for a joint field visit by both."

453
If you look at 7.3: "Subsequent to the joint field visit the owner shall form a preliminary, non-binding
opinion and will communicate the opinion to the licensee within a reasonable period of time."

454
Under 7.4: "If the preliminary opinion is in favour of the proposed affixing of the attachments, the owner
will prepare a preliminary estimate of any costs of make-ready work and deliver the estimate to the
licensee."

455
Under 7.5: "After the estimate has been received and accepted by the licensee, the permit in duplicate
will be prepared, signed, delivered by the licensee to the owner. Each permit shall be accompanied by
drawings, a purchase order, other items that the owner may reasonably require, such as a security
deposit."

456
If you look over the page to 7.7: "If the owner is satisfied that the permit documentation is in accordance
with the article, the owner will process the permit within a reasonable period of time."

457
Carrying on with that paragraph: "Upon completion of the make-ready work, if any, if the proposal is still
feasible for approval in the sole discretion of the owner and subject to the provisions of Article 8, the
owner will sign both copies of the permit and return a copy to the licensee's representative."

458
DR. MITCHELL: And your question is?

459
MR. ENGELHART: Would you consider all of those procedures and requirements to be a
disadvantage of tenancy?

460
DR. MITCHELL: No, at first reading I would consider this to be reasonable requirements to
coordinate the use of a shared resource. And many of these burdens would be incurred in some different form by a pole owner who needs to make changes or accommodate his own pole.

461
MR. ENGELHART: Well, we talked this morning about the situation of a joint-use agreement
between the phone company and the power utility. And you told me that you were not familiar with how those agreements were actually worded. In that situation, where the phone company is an owner of 40 percent of the poles and not a tenant, will you expect to see something similar to Article 7 or very different procedures, where the phone company wanted to attach to an electric utility pole?

462
DR. MITCHELL: Well, that's difficult for me to conjecture without knowing more about the
specifics of the three different parties that you're putting forward, the type of
working relationships they have, and so on. The need to do field visits, to have
drawings, to have assured funding and so on. They may take different forms with different organizational relationships, but the underlying needs to have drawings,
to have field visits, to determine whether the space is there and so on. I can't see
that that should depend substantially on whether they're joint owners or they're
separate attachers.

463
MR. ENGELHART: So we have on the record of this proceeding a joint-use agreement between
Ontario Hydro and Bell Canada. And I take it from your evidence earlier you haven't had an opportunity to look at that. But you would expect to see similar provisions to Article 7 in that agreement; is that right?

464
DR. MITCHELL: I would expect that in the ongoing operational and financial arrangements
between the two companies, there would be equivalent sorts of considerations taken into account. Whether they would appear in agreements I have no idea about that.

465
MR. ENGELHART: What about the telecom affiliate of an electrical distributor? Would you expect
that they have to go through that whole process?

466
DR. MITCHELL: Again, drawings, field information, and so on, I don't see why being an affiliate would change the facts on the ground.

467
MR. ENGELHART: I don't see why either, but you don't have any evidence, do you, that would suggest one way or the other whether the facts are different on the ground? You would expect the affiliate would have to do all those same things, wouldn't you?

468
DR. MITCHELL: Did I misunderstand the question?

469
MR. ENGELHART: No, you're saying you would expect the affiliate to do all those things.

470
DR. MITCHELL: No, I said I -- maybe I misspoke. I thought I said I didn't see any reason that it would be different in terms of drawings and field inspections for an affiliate, from an unaffiliated cable attacher.

471
MR. ENGELHART: And so if it was different for the affiliate or if it was different for the joint-use phone company, you would agree with me that that would be a disadvantage of tenancy.

472
DR. MITCHELL: Well, it needs to be a difference in substance, not simply whether it's present in one itemized, printed agreement, and agreed to verbally or in repeated operational relationships between two provisioning departments in another.

473
MR. ENGELHART: Let's have a look at clause 8.3 on page 10. That says that the permit can be revoked. Do you consider that to be a disadvantage of tenancy?

474
DR. MITCHELL: No, I'm not sure I would consider that a disadvantage of tenancy.

475
MR. ENGELHART: You would not consider it a disadvantage of tenancy that your permit can be revoked?

476
DR. MITCHELL: For these reasons --

477
MR. ENGELHART: And if a phone company under a joint-use agreement, if their attachment -- if their right to attachment could not be revoked, you would not consider that to be an advantage?

478
DR. MITCHELL: Well, let's take the non-compliant with the obligations of the owner. I have to be entirely hypothetical because I don't know the situation, but suppose this Board had requirements on the LDC, which it could not satisfy because of some attachment. Now, if that's a joint-use pole, are you telling me that the LDC is unable to have the attachment removed or relocated but that the cable attachment

causing the same non-compliance could be removed?

479
MR. ENGELHART: Well, as we discussed earlier, the essence of a joint-use agreement is that the joint user is entitled to use the pole.

480
DR. MITCHELL: Even if non-compliant?

481
MR. ENGELHART: It's the responsibility of the pole owner to make it so.

482
In any event, your testimony here is that you do not consider the right of revocation to be a detriment of tenancy; is that right?

483
DR. MITCHELL: As I understand these reasons, no. Or these conditions listed.

484
MR. ENGELHART: Thank you, Mr. Chair. Those are my questions.

485
MR. KAISER: Thank you, Mr. Engelhart.

486
Mr. Dingwall?

487
MR. DINGWALL: Thank you, sir.

488
CROSS-EXAMINATION BY MR. DINGWALL:

489
MR. DINGWALL: Mr. Ford's been kind enough to give me a clear line of vision so I'll be staying in my current seat.

490
MR. KAISER: All right.

491
MR. DINGWALL: Dr. Mitchell, in reading your evidence, I take it that you are moderately familiar with the Ontario regulatory context as it applies to electricity, LDC rate-setting; is that correct?

492
DR. MITCHELL: Well, moderately might be an overstatement. I have, I think, a slight passing familiarity.

493
MR. DINGWALL: So you understand that from the period 1999 to 2005, the electricity LDCs were subject to a performance-based rate-making regime; are you aware of that?

494
DR. MITCHELL: I am aware of a performance-based rate-making regime. The dates, no, I couldn't be specific on that.

495
MR. DINGWALL: I notice you've been sitting in this room for the past couple of days and have heard, likely, the evidence of some of the previous panels; is that correct?

496
DR. MITCHELL: Yes, I have.

497
MR. DINGWALL: So you're aware that part of the effect of any rate that might be set for pole rentals by this Board would be to apply to time periods during which the LDCs would have been subject to a PBR regime? Are you aware of that, sir?

498
DR. MITCHELL: Yes.

499
MR. DINGWALL: In reading through your evidence, it appears that making the suggestion that the Board could set an upper and lower bandwidth, effectively, under which these rental rates might be calculated, would you be using or suggesting a formula similar to the formula that Mr. Ford applied for establishing such a bandwidth?

500
DR. MITCHELL: Well, I, in the evidence that I prepared, had not addressed a formula or specific factual material that one would need to move to in order to determine the rate bands that you are questioning.

501
If the Board decided, in its wisdom, that the diagram and that the underlying assumptions of a uniform cost per foot of a pole was a satisfactory or appropriate measure of the various costs incurred to accommodate the different parties, then that data, yes, could be used to determine lower and upper band rates.

502
MR. DINGWALL: So, taking that example a step further, what kind of information would you need to begin the process of creating that type of scenario?

503
DR. MITCHELL: Well, let me try to keep that at a fairly summary or simplified level. I think the basic approach, if one were to go down that route, would be to have a measure of the embedded cost of a pole, making the critical assumption that costs per foot can be determined based on a typical number of feet for that embedded cost number, and then further determining how much additional space in length and feet would be needed for each type of user of a pole.

504
MR. DINGWALL: So, in terms of gaining an understanding of embedded costs, which would be one of those elements, I presume you would need a representative sampling of what an embedded cost history looks like among a number of distribution companies; would that be correct?

505
DR. MITCHELL: Well, it could be done on a company-by-company basis, or it could be a sample of companies, as you suggest, if one felt a sample were sufficiently representative and application of a single rate representative of that sample was appropriate for the companies you were going to apply it to.

506
There's a decision about -- is it a company-by-company, or is it to be some broader measure? But, yes, data of that type would feed into it.

507
MR. DINGWALL: And in order for there to be a fair negotiating process in which

an upper
boundary and a lower boundary -- in order for there to be a fair negotiating process, would there need to really be an upper limit and a lower limit?

508
DR. MITCHELL: Yes, I think so.

509
MR. DINGWALL: And as I understand it from your evidence, the control mechanism to ensure that there is fair negotiation is then a recourse to a regulatory process, which would then look at the actual cost that a particular distributor was putting forward? Is that correct?

510
DR. MITCHELL: Well, I haven't addressed, except in broad terms, the regulatory intervention or backstop authority or appeal process, however it might be set up. But it, I would imagine, would surely investigate both the underlying financial data and historical data on the inventory of poles that would support such a cost figure, and the assumptions about sizes of poles and space that are needed for the utility or utilities to which it's being applied. But, as I said in my prepared remarks, it would, in addition, examine whether the negotiated rates or the range of rates that is in dispute among the parties are consistent with the standards of fairness that I am recommending. In effect, that would be an additional constraint, that whatever rates are being proposed satisfy these fundamental fairness requirements.

511
MR. DINGWALL: And the fairness requirements would then be that the rates proposed lie within the bandwidth of lower limit and upper limit; is that correct?

512
DR. MITCHELL: It would require that, but it would require more than that. It would require satisfying, for example, the Littlechild fairness principle, fairness rule.

513
MR. DINGWALL: And that's where we move into more of a cost-allocation analysis; is that correct?
Maybe I'm misunderstanding you, sir. Let me take you through an example.

514
DR. MITCHELL: Sure.

515
MR. DINGWALL: And then maybe you can tell me where that fits in with what you're proposing we consider.

516
Imagining that years into the future, when the lower range of what is reasonable and the higher range of what is reasonable have been established, one utility puts forth a cost which a cable company or a telecommunications company believes might be outside of their actual cost experience, what would be the remedy for the applicant seeking the rental rate?

517
DR. MITCHELL: May I put a question back to you for clarification?

518

MR. DINGWALL: Certainly, sir.

519
DR. MITCHELL: Is the dispute about the embedded cost per pole, if we can take a specific question, the embedded cost, the total embedded cost of the pole, or is it a dispute about the rate which the pole owner is asking the cable company to pay, which is only, usually, a portion of that total cost?

520
MR. DINGWALL: Let's presume the dispute is about the rate which is a portion of the cost, and that somehow the decision to deal with allocation factors has been made elsewhere satisfactorily. Take me through what you believe would happen.

521
DR. MITCHELL: Let me give you a couple different possible environments that might occur, because I think that may cut through to the essence of what I think your question may be.

522
Case 1: The Board prescribes a precise formula but not a dollar number, and says, You companies must come to an agreement that is consistent with that formula. Okay? Then the issues are: Has the formula been applied correctly to the constituent numbers of separation space and so on, agree with the facts? And is the embedded cost and the other financial data consistent with the reality for that company? Right? And if there are disputes about that, I would imagine you need some dispute resolution mechanism.

523
What I'm suggesting is an environment in which there is not a complete prescription of a formula, but rather there is a prescription that, You companies work out among yourselves a mutually agreed rate that is within these bounds, above incremental costs and below stand-alone costs, and whatever rate you arrive at will pass the fairness test. Now, there's not a single rate that does that. There's a range of rates, and that range will depend on the facts.

524
Now, there could be a dispute, then, about, well, what is that range? And that gets us back to what are the embedded costs, how much pole space is needed for such and such.

525
And that, I think, is what I thought you were saying, Well, that gets into cost allocation. Yes, it does, and the issue is, is that cost allocation within the range of fairness?

526
MR. DINGWALL: Now, in order to establish this range of fairness, it sounds like there would be some degree of econometric analysis required; is that correct?

527
DR. MITCHELL: Oh, I wouldn't say econometrics. You would need a fairly high powered set of statistical tools or higher mathematics. What's needed here is good cost accounting and some basic arithmetic.

528
MR. DINGWALL: And the good cost accounting would require accurate input numbers, would it not?

529
DR. MITCHELL: Well, the results would be better with better data, better quality data, yes. But if one needs to proceed with incomplete data or uncertain data, but there's still a benefit in proceeding to an agreed rate, the principles can be applied to assumed data, or approximate data, or averages in your case, rather than on a company-by-company basis, or a sample of companies that you believe have better data. I think that's sort of a continuum in terms of the quality of the final number that one arrives at.

530
MR. DINGWALL: Now, is the advantage of this process that it would avoid having to go through 97 individual company-by-company cost analyses?

531
DR. MITCHELL: It could avoid many individual cost analyses if the parties, for example, in a particular negotiation, took other data as sufficiently representative, or subject to some modification for local conditions, and didn't have to go back to the books of that individual pole owner. And it could also avoid all 97 if the position was to adopt a paper model with assumptions that the embedded cost across Ontario is one number, and we're going to apply it uniformly with one formula. You could avoid all of that, yes.

532
MR. DINGWALL: Now, that seems to be conditional on the parties actually agreeing what the input numbers would be, what the effective size of the sample would be, what the accuracy of it would be, does that not?

533
DR. MITCHELL: Well, they would have to agree on the rate that they're going to adopt. Now, whether it requires all of those enumerated components for them to get to an agreement will depend on their negotiation. But I can imagine one company looking at a sister company in another part of the province and saying, Well, you know, we think we're similarly situated. We buy poles from the same source, we have about the same labour costs and so on, and you've already done the analysis. We're willing to take it on faith that we're within 5 percent or something like that, of that number.

534
I mean, I'm blue-skying here; I don't know the facts, right? But it isn't necessary in every case that you go back and spend a lot of money accounting for things. You can count the poles and you can agree on a baseline number, you can cut through a lot of this.

535
On the other hand, if it's a real dispute, if the company says, Well, we're just not like those guys at all, you know, our costs are vastly different and it would be unfair to us to have a rate based on that, then some homework is required.

536
MR. DINGWALL: And in that situation, accurate information would be required because they're suggesting that they would require an individual treatment; is that correct?

537
DR. MITCHELL: If they couldn't reach agreement with their counterpart, that could be the recourse. Now, I suppose the Board also could make a finding that it's in the

public interest or it is resource-saving not to go through that cost exercise because it's very burdensome. It's a small company, whatever. Let's have a provisional rate, or let's wait until the accounting is done in several years, or find some other solution to it. It's not that it has to be rigidly applied, company by company, in order to satisfy an overall standard.

538
MR. DINGWALL: Now, we've heard evidence over the last couple of days that not every pole that's put in service that has joint-use capability is necessarily immediately attached by an additional user. In context of what you view as fair cost allocation, would the costs for these joint-use poles be attributed at the time that they're brought into service or at the time when someone actually attaches to them?

539
DR. MITCHELL: Well, I think you could do either of those, provided you maintain your cost measurements on a consistent basis. You could compute an average cost per pole, whether attached to or not, or -- yes, and develop a rate from that, or a different rate based just on poles that actually have attachments, and then apply that incrementally.

540
MR. DINGWALL: One of the awkward points that comes with the retrospective aspect of this hearing is that, while under a normal circumstance a utility's revenue requirement would be quite clear - pole rental revenue would be part of the revenue requirement so it would go towards the cost-of-service - since we're looking back into a PBR period, it's acknowledged by the EDA in, I believe, an undertaking response that the amounts that would apply retroactively in excess of any rates that are in place right now would be solely to the account of the shareholder. Would you agree that that makes the bargaining motivation somewhat different than a simple cost-recovery exercise?

541
DR. MITCHELL: And by "a simple cost-recovery exercise," what do you mean?

542
MR. DINGWALL: For example, there are rates available with respect to access to monopoly services for other industries which are regulated or quasi-regulated by this Board. For example, there are service fees set out for electricity retailers for processing service transaction requests, gaining historical-use information. There are quasi-regulated fees with respect to the agency billing and collection service on the natural gas side, and there are tariffed fees for storage and transportation services as part of utility rates on the gas side. And to that extent, those costs are broken out, identified, and then recovered on a -- usually, on an incurrence basis.

543
It seems that there's two possible motivations that a utility could have in negotiating a rental charge. One could be recovering their costs. The other could be maximizing revenue because it's -- because it's a shareholder benefit, in retrospect.

544
Would you agree with me that, where the utilities have the potential motivation behind their efforts of negotiation as maximizing revenue, that that deviates somewhat from the motivation that a

utility would
have that was simply seeking to recover incurred expenses?

545
DR. MITCHELL: Well, I believe I would agree with you that different incentives in those two
situations -- or different rewards in those two situations, could affect the incentive.

546
MR. DINGWALL: Wouldn't it make sense, in that circumstance, that there be some sort of safety
valve to ensure that the rate being sought through negotiation is not excessive?

547
DR. MITCHELL: Well, I guess it's difficult to disagree with that, in principle. I would wonder
whether the magnitudes we're talking about, of possibly higher than that standard
rates leading to additional revenues, would have a sufficiently substantial effect
on shareholder return that it would approach or exceed the standard that the
Board, I believe, has set for authorized rate of return, or at least indicative rate of
return.

548
But, in principle, I guess you could imagine, if not for this type of attachment, maybe some other
situation in which sufficiently increased revenues could arise, and there would be a need for some
oversight.

549
MR. DINGWALL: Are you aware, sir, that this Board is contemplating a number of processes over
the next three years, including the establishment of a new rate handbook,
including the potential rebasing of electricity distribution rates, including a
generic cost allocation study, and including a review of depreciation rates, which
could lead to some significant gray area in the meantime for what -- for
determining what actual costs are, especially coming out of a five-year PBR, and
determining what cost structures might be like in the future?

550
DR. MITCHELL: Well, I'm aware, in just very general terms, yes, that there are a number of things
underway or planned in that area.

551
MR. DINGWALL: And do you see those shifting sands as creating any barriers or roadblocks to the
type of cost-setting analysis that you're suggesting be undertaken?

552
DR. MITCHELL: Well, I think that the cost analysis needed here, as we've discussed a few
moments ago, is well-restricted to getting a reliable handle on the historic costs
the companies have incurred, and the but-for costs or the additional costs of
various types of accommodation of other users on the pole, or the savings, if you
didn't accommodate them.

553
But everything here has been cast in retrospective terms, and just with respect to poles. So each of the
items you listed seems to me to be going quite substantially beyond just the poles. And, in the scope of

all the things, I don't see that the pole costs are going to be a particularly large part of that.

554
MR. DINGWALL: Thank you, sir. Those are my questions.

555
MR. KAISER: Are there any other parties, before we proceed to commission counsel?

556
Mr. Lyle?

557
CROSS-EXAMINATION BY MR. LYLE:

558
MR. LYLE: Thank you, Mr. Chair.

559
I want to follow up on some of the questions that Mr. Dingwall was asking Dr. Mitchell. If I could turn you to page 21 of your report.

560
DR. MITCHELL: Yes.

561
MR. LYLE: And at the second bullet point of that page, I believe that outlines, in part, your recommended approach, where you state the regulator could approve a set of rules for determining the upper and lower bounds on lease rates, and require that pole owners be able to justify their rates, using a fair and reasonable cost allocation process.

562
And I understood from your answers to Mr. Dingwall that one approach might be for the Board to establish the lower bound as incremental costs and the upper bound as stand-alone costs. Is that one approach?

563
DR. MITCHELL: That's a portion of one approach, yes.

564
MR. LYLE: And then superimposed on that, you would propose a cost allocation methodology?

565
DR. MITCHELL: I would propose that the Board require rates arrived at be within those bounds and also satisfy the fairness standards for cost allocation, which will narrow those bounds considerably.

566
MR. LYLE: And the fairness standard would have to use one of the three methodologies that you outlined in your presentation earlier today?

567
DR. MITCHELL: I would suggest any of those three, or the range of those three, would be suitable ways to proceed.

568
MR. LYLE: Now, that could still be quite a broad range, could it not be, between the upper and lower bound?

569
DR. MITCHELL: Between the upper bound and the lower bound could be a

considerable range. It's
a much narrower range of rates that would satisfy the fairness rules.

570
MR. LYLE: And then you would leave it to parties to negotiate amongst themselves, as they have
been doing for several years now?

571
DR. MITCHELL: But with the key difference that they are now given a context within which their
negotiations must fit.

572
MR. LYLE: Would you suggest that the Board place any time limitations on how long those
negotiations could run before the Board would conclude that a successful conclusion is
not going to be reached?

573
DR. MITCHELL: I think that's plausible, yes.

574
MR. LYLE: And once it becomes clear that a particular set of negotiations are not going to come to a
successful conclusion, I believe your recommendation was that there then be some outlet
to come back to the Board?

575
DR. MITCHELL: Come back to the Board or an arbitrator or some -- yes, some authorized process
for resolving it.

576
MR. LYLE: Now, I believe it's your evidence that you think that approach would reduce the
regulatory burden; is that correct?

577
DR. MITCHELL: Yes, it is.

578
MR. LYLE: And so it's your view that that process, which could lead to a number of individual cases
coming back before the Board, is, in fact, a reduction in the regulatory burden over the
Board in this proceeding establishing a single uniform province-wide charge?

579
DR. MITCHELL: A fair question. In making that statement about reducing the regulatory burden, I
implicitly had in mind some type of requirement where the Board would have
enunciated a policy of a company-by-company or instance-by-instance
determination of the rate for that particular circumstance. If you talk about
establishing a province-wide, once-for-all rate, once that decision has been taken,
there's very little regulatory burden.

580
MR. LYLE: And just one final question, Dr. Mitchell. You mentioned Dr. Stephen Littlechild in your
evidence and I'm just wondering, do you have any knowledge of how UK energy and
telecom regulators have dealt with these issues?

581
DR. MITCHELL: Pole attachments?

582
MR. LYLE: Pole attachments, yes.

583
DR. MITCHELL: Not specifically, no.

584
MR. LYLE: Thank you, Mr. Chair. Those are my questions.

585
MR. KAISER: Thank you, Mr. Lyle.

586
[The Board confers]

587
QUESTIONS FROM THE BOARD:

588
MS. CHAPLIN: Thank you.

589
Dr. Mitchell, if I could just start with the questions that Mr. Lyle had. Is it your view that, in the absence of perhaps detailed and robust utility cost data, that a provisional rate - I think that might have been the terminology you used - would, if it were based on your fairness standard, that would -- would you consider that to be an appropriate way to proceed, at least in the initial instance?

590
DR. MITCHELL: Well, I think that's a serious alternative or interim possibility for you. As a general matter, I would say regulators and companies are always in a state of incomplete information, and the question is how to get better information and what the costs of getting it are, what the costs of waiting to get it are. And if, in your assessment, it's important to move forward, even with limited data, then some type of provisional arrangement, perhaps one that could be corrected ex post facto when more information is available, could well be a useful mechanism.

591
But, yes, I would also agree that, and would recommend, that in establishing that process you set out very clearly the requirements of what constitutes a fair rate, a range of fairness that should apply, however the data are arrived at.

592
MS. CHAPLIN: And in your view, because I'm not quite clear on this from your evidence, would you expect each user of the pole, setting aside the LDC, but each of the attaching cables, telecoms, would you expect each of them to pay the same rental charge?

593
DR. MITCHELL: On a particular pole or a particular utility?

594
MS. CHAPLIN: On a particular utility system.

595
DR. MITCHELL: Well, the fairness principles here would be that the violinist and the violinist and the cellist pay the same share of the common costs and the cellist pays more only because he imposes additional costs. So, if we're in that sort of circumstance, and we have two different users who impose the same cost, then the principle would say they ought to share the same costs in the same way.

596

MS. CHAPLIN: And how would you envision that coming about in a situation where these charges are being reached through a negotiation process, perhaps between individual cable attachers and the LDC?

597

DR. MITCHELL: Well, just as a threshold matter, if the two or several users of that company's poles are similar in terms of their individual requirements, then -- and they would have the same cost data, of course, that applied to them, application of the principles ought to produce very similar rates to begin with, because there is not such a large range of rates which would meet the test of fairness. They should, by my benchmark rule 1, divide the same costs equally. If one of them went to benchmark rule 3 and came to a somewhat different number, yes, it would be somewhat different, but the magnitude of the variation is not so large.

598

So if you're concerned about exact equality, the suggestion of separate, uncoordinated negotiations or no retroactive adjustment would not fully solve that problem, I concede that. But I don't think the differences are particularly material.

599

MS. CHAPLIN: And I'm curious, just coming back to your analogies, your taxi analogy and your landing runway analogy, in neither of those does one of the parties own the facility. The airline doesn't own the landing strip and the cellist doesn't own the taxi. Does that make any difference?

600

DR. MITCHELL: Well, if this is a musical trio that is committed to each other for the life of a cab, it doesn't, right? If it's a pickup group that is likely to fall apart next week, there might be some effect, in that the musician who buys the cab has the risk of not having customers to help him pay for it.

601

In the case of the airlines, I mean, individual airline companies do go out of business. We certainly know that. But in terms of revenues to support that runway, it's probably much more driven by the aggregate transportation demand of that part of the country, and so the importance of individual, identified users or sharers in the cost, I think, is not such a risk for recovery.

602

MS. CHAPLIN: Okay. Thank you very much.

603

MR. SOMMERVILLE: Just one question flowing from that last answer. If the cab is owned by one of the musicians, and the cab is a regulated entity and has a certain amount of revenue coming in like clockwork every week, does that change your analogy at all?

604

DR. MITCHELL: Well, a guaranteed stream of revenue against a particular asset - I think that's where you're question is going - certainly reduces the investment risk or the recovery risk of the owner of that asset. So this musician might be exposed to much less uncertainty about being able to pay off that investment.

605

MR. SOMMERVILLE: And how would the cost -- how should the cost be shared by the various musicians in that case?

606
DR. MITCHELL: Again, that's where one of them owns the cab, and the other two share when they ride and don't share when they -- or may not share when they don't ride.

607
MR. SOMMERVILLE: And there's a highly reliable revenue stream.

608
DR. MITCHELL: Right.

609
MR. SOMMERVILLE: Derived from the taxi.

610
DR. MITCHELL: Yes. Well, there are a number of possibilities. One would be, they could formally or informally engage in longer-term contracting to say, I will guarantee you, you know, so many trips a month; don't know quite when my gigs are going to be, but, you know, a take or pay type of arrangement; I'll make you whole for my part of it. That would remove the risk of ownership for that potential part of the stream.

611
If they wanted completely to be on a spot rate basis of, I'll pay when I ride and I don't owe you anything when I don't, the cab owner, that musician, might well feel that it needed some insurance, in effect, for the revenue -- for the uncertain revenue stream from his fellow musicians, and that a different sharing rule, then, I pay one-third and each of you pay one-third, is appropriate to cover that cost risk.

612
MR. SOMMERVILLE: I don't want to be tedious about this, but what if that revenue stream that is derived from the taxi takes into account the cost of the taxi itself so that the cost of the taxi is one of the bases upon which the revenue stream that is coming in from the taxi? Does that change the analogy? Where does the fairness principle play into that circumstance? Where the taxi's costs drive the revenue, and the revenue is certain, how does -- how should the musicians split up the cost in that circumstance?

613
DR. MITCHELL: Well, if the revenue stream is certain, and fully covers the investment, there's no investment risk. Are we agreed on that part of your example?

614
Then the additional revenue and rides are really a windfall for the parties. And again, for each musician, the opportunity cost is to go to a cab on the open market, take a $60 cab, or define some cost-sharing arrangement with their fellow member.

615
MR. SOMMERVILLE: And if there is no open market, then that opportunity isn't there either, is it?

616
DR. MITCHELL: Well, yes, we could posit that there is none. I guess, in examples, they've sort of

had in the back of their mind that there is a stand-alone alternative. You could go
out and buy a cab for yourself, something like that. So, I mean, there is a
competitive alternative standing in the back of this hypothesis, yes.

617

MR. SOMMERVILLE: Thank you.

618

MR. KAISER: Dr. Mitchell, the rate that comes out of your methodology is higher than the rate that the
CCTA is proposing and higher than the one the CRTC found; correct?

619

DR. MITCHELL: Certainly, on the numbers that have been used in the exercise as presented here,
that would be correct.

620

MR. KAISER: Now, we also have in evidence a number of U.S. rates, and they are lower than the
CRTC rate, by and large, and one of the reasons that's been advanced is that the FCC
used a lower portion of space, as it were, in calculating the pole usage requirements of
the cable companies.

621

Is it your position that all these state regulators that were setting these rates over the past 20 years in the
United States simply had their economics wrong?

622

DR. MITCHELL: No. My position would be that they were taking account of policy factors that
went beyond just the economic considerations of a fair division of cost.

623

MR. KAISER: And I think you said, may have suggested, that in the environment of that era they were
trying to promote competition in telecommunications.

624

DR. MITCHELL: Yes. And I believe -- I don't know whether I cited, but I did refer to the
legislative history in the U.S. that established the statute for the national rate --
or the national guideline for the rate.

625

MR. KAISER: And do any of those U.S. decisions - most of them, I suppose, are state cases; there may
be some federal cases - do they explicitly acknowledge that that's the reason they've
departed from what you would perceive to be the correct economic test?

626

DR. MITCHELL: Well, a number of those state decisions, and FCC discussion, acknowledge the
desire to foster telecommunications competition to assist the development of the
cable television industry at different periods. So to that extent there is
acknowledgment. But whether they acknowledge it as a departure from
economic principles, I'm not sure I could say that.

627

MR. KAISER: Now, your model, which is on the blackboard there -- you've explained the difference
between how your approach differs from Dr. Ford's -- from Mr. Ford's. And you've got
two water companies, A and B, and you split the common cost 50/50; correct?

628
DR. MITCHELL: Split the common pipe 50/50, yes.

629
MR. KAISER: And then - I just want to understand your reasoning - at page 24 of your evidence, if you can just turn to that, this is where you go to the evidence of the 60/40. And Mr. Engelhart dealt with some of this. And you refer to the fact that the respective shares in the power and telephone companies has been 60/40 in British Columbia since 1971, and the similar ratios in Quebec, similar ratios in Ontario, similar ratios in Nova Scotia.

630
And then you say, at the bottom of page 24:

631
"Indeed, the 60/40 division of costs would seem to reasonably approximate the difference in the incremental costs of pole attachments of the two types of companies."

632
And I thought you said that you felt you could rely on this empirical evidence, because these were parties bargaining with equal bargaining power; and, in fact, you said, moreover, the 60/40 accommodation between power and telephone pole users constitutes empirical evidence of a fair-sharing rule, because in this case, each party is at one time a tenant and at another time an owner. In other words, there is true reciprocity.

633
DR. MITCHELL: Mm-hm.

634
MR. KAISER: So if we look at your model and environment, where there are two attachers, that gives us 50 percent. And then you say, Well, let's look at the free market, where people have equal bargaining power, and guess what? It's 60/40, so that's close. You say that reasonably approximates your model's prediction, or your model's calculation. Is that the argument you're making?

635
DR. MITCHELL: If the power pole utility and the telephone company utility have the same incremental cost requirements to provide their dedicated space - they each needed 8 feet of space on the pole - then I would expect we would see, in repeated negotiations, about a 50/50 division of the total cost. But because the power company has a larger incremental cost, it needs more pole, and it may need, actually, a stronger pole, or it may be more expensive to put in a stronger pole, I would not expect 50/50. I would expect the power pole to have a greater amount. And it's that consistency of 60/40 that I'd say is empirical evidence that supports the view that this is consistent with the fair division bargain.

636
MR. KAISER: Well, the numbers are close, but I thought what you said up here was, incrementals are separate; A has got an incremental of this, B's got an increment of that, they bear that cost. We know when it comes to commons, because there are two of them, we divide it 50/50.

637
DR. MITCHELL: That's what I said, yes.

638
MR. KAISER: But here you're talking that 60/40, which is really the division of the total cost. I guess you're saying that's common plus incremental and so --

639
DR. MITCHELL: Correct --

640
MR. KAISER: -- and so that's where the 60/40 --

641
DR. MITCHELL: Correct, commons plus all the incremental is 60/40, I'm sorry. The common only would be 50/50.

642
MR. KAISER: I got you. Now, Mr. Engelhart put to you this Avrich Johnson theory which we discussed, which is this whole theory that companies under rate-of-return regulation have a tendency and a desire to dump as much on the rate base as they can. In this case, the power companies and the telephone companies were certainly, for most of this period, subject to a rate-of-return regulation. If they both were subject to the Avrich Johnson effect, would it affect the ratios to any degree that you could predict, or the ratio?

643
DR. MITCHELL: Mr. Chair, sitting here today, I can't say that it wouldn't affect it at all, but I would be surprised if it had much effect. You pose an interesting question that I haven't actually thought closely about.

644
MR. KAISER: But there would be an effect on both sides?

645
DR. MITCHELL: I would expect both companies would be affected similarly, and whether the numerical effect is sufficient to preserve the proportions, I think we don't know. But yes, similar in effect to each company.

646
MR. KAISER: I have one last question. In your example, we have A and B. In this case, though, we've heard evidence from, I forget the gentlemen from Grimsby, he was telling us this morning that when he buys poles he makes sure there's enough space for three attachers. And you know from the settlement agreement that these rates are going to apply to competing telecoms, and you've also heard that the electricity companies have competing telecoms or telecom affiliates such as Toronto Hydro Telecom. So let's suppose there's C in your model, or the real possibility of C, doesn't matter whether it's 2 miles or 8 miles or 5 miles out, we don't care about that.

647
DR. MITCHELL: Mm-hm.

648
MR. KAISER: Would you see there being any bases for having one rate where there are two attachers and a separate rate where there are three attachers, and have that automatically apply depending on the case?

649
DR. MITCHELL: I think if the two-attacher rates and alternatively the three-attacher rates were each developed according to fair cost division principles, I think that would be a defensible situation.

650
MR. KAISER: And just to complete that, if we had a three-attacher rate, we would simply be dividing the common costs by 33 and a third percent in each case as opposed to 50 percent when we have two attachers.

651
DR. MITCHELL: Yes, the benchmark one that we've been talking about here for a while.

652
MR. KAISER: So that would be the relevant --

653
DR. MITCHELL: Or something similar for the others, that's right.

654
MR. KAISER: Thank you. Is there anything further Mr. Lyle?

655
MR. LYLE: No, Mr. Chair. Other than to clarify the remainder of the schedule for the hearing.

656
MR. RUBY: Mr. Chair, if I may, I did have one question in redirect.

657
MR. KAISER: I'm sorry, Mr. Ruby.

658
RE-EXAMINATION BY MR. RUBY:

659
MR. RUBY: Dr. Mitchell, Mr. Engelhart put to you a hypothetical situation where a pole was built by a power company for joint use with Bell Canada, and a cable company comes along later and wants to attach to that pole. Do the fair cost allocation benchmarks change whether or not there is surplus capacity on that pole?

660
DR. MITCHELL: No, the benchmarks are basic principles that would be applied to any of the conditions we're examining, whether there is spare capacity, new capacity required --

661
MR. RUBY: Thank you.

662
MR. KAISER: Thank you, Mr. Ruby.

663
Mr. Lyle?

664

PROCEDURAL MATTERS:

665

MR. LYLE: Thank you, Mr. Chair. Just returning to the schedule, then, on November 8th, we are scheduled to have the MTS Allstream witness appear. The scheduled start time is 9:30. I don't know if we have the whole day, but I don't imagine it's going to take that long. And then on November 10th we're scheduled to start at 12:00 with the LDC executive witnesses returning to be cross-examined.

666

MR. KAISER: Thank you. We stand adjourned until -- Mr. Sommerville's reminded me, Mr. Brett, I don't know whether it was your motion or whether it was Mr. Ruby's, I don't know whether you want to have a discussion on written argument at this time. I think you had both proposed it.

667

MR. BRETT: Yes, that's right, Mr. Chairman. We can do that at the later date, when we come back.

668

MR. KAISER: You want to deal with that later, deal with that when we come back on the --

669

MR. RUBY: We're in the Board's hands in that respect.

670

MR. KAISER: We'll deal with it on the 8th, then. Thank you very much.

671

--- Whereupon the hearing adjourned at 3:25 p.m.

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ONTARIO ENERGY BOARD

Volume: 4

8 NOVEMBER 2004

BEFORE:

G. KAISER
PRESIDING MEMBER AND VICE CHAIR

P. SOMMERVILLE
MEMBER

C. CHAPLIN
MEMBER

RP-2003-0249

IN THE MATTER OF a hearing held on Monday, 8 November 2004, in Toronto, Ontario; IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B); AND IN THE MATTER OF an Application pursuant to section 74 of the Ontario Energy Board Act, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licences of electricity distributors.

RP-2003-0249

8 NOVEMBER 2004

HEARING HELD AT TORONTO, ONTARIO

APPEARANCES

7

MICHAEL MILLER
Board Counsel

TOM BRETT
Canadian Cable Television Association

PETER RUBY
Canadian Electricity Association

ALAN MARK
The Electricity Distributors Association

BRIAN DINGWALL
Energy Probe

JENNY CROWE
MTS Allstream Inc.

LJUBA DJURDJEVIC
Toronto Hydro

ANDREW LOKAN
Power Workers' Union

ADELE PANTUSA
Hydro One

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UNDERTAKINGS

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14
--- Upon commencing at 9:30 a.m.

15
MR. KAISER: Please be seated.

16
This is a continuation of the Board's hearing with respect to the application of the Canadian Cable Television Association to amend the licences of electric distributors in the province with respect to charges for pole access.

17
Today we are scheduled to hear the evidence of MTS Allstream. Ms. Crowe?

18
MS. CROWE: Thank you. I'll just introduce the witnesses and then perhaps they can be sworn.

19
Closest to me is Teresa Griffin-Muir. She's vice-president, Regulatory Affairs for MTS Allstream. And next to her is Bill Kriski, who's an outside plant technology specialist in Network Services at MTS Allstream, from our Winnipeg office.

20
MTS ALLSTREAM PANEL 1 - GRIFFIN-MUIR, KRISKI:

21
T.GRIFFIN-MUIR; Sworn.

22
B.KRISKI; Sworn.

23
EXAMINATION BY MS. CROWE:

24
MS. CROWE: Ms. Muir, I'll start with you. How long have you been with MTS Allstream?

25
MS. GRIFFIN-MUIR: Four years.

26
MS. CROWE: And could you please describe your responsibilities.

27
MS. GRIFFIN-MUIR: I'm responsible for the development and implementation of MTS Allstream's regulatory strategy, and for ensuring compliance thereto.

28
MS. CROWE: And are you familiar with the issues surrounding access to support structures, such as the hydro distribution poles?

29
MS. GRIFFIN-MUIR: Yes.

30
MS. CROWE: Thank you.

31
Ms. Muir, the pre-filed evidence that was submitted by MTS Allstream in this proceeding was prepared

under your direction?

32
MS. GRIFFIN-MUIR: Yes, it was.

33
MS. CROWE: And do you adopt this evidence as your evidence in this proceeding?

34
MS. GRIFFIN-MUIR: Yes, I do, subject to a couple of clarifications.

35
MS. CROWE: Could you explain those for us.

36
MS. GRIFFIN-MUIR: Certainly. In interrogatory response to OEB Staff question number 2, filed on 13 September, 2004, in the second paragraph of the answer, second sentence, it states:

37
"For example, as noted in attachment 1, in one instance that is still the subject of negotiation, the electricity distributor is demanding a 35 percent increase in pole rental charge, while in another instance, the electricity distributor is demanding an increase of close to 50 percent."

38
Those percentages were calculated incorrectly. The sentence should read:

39
"For example, as noted in attachment 1, in one instance that is still the subject of negotiation, the electricity distributor is demanding a 116 percent increase in the pole rental charge, while in another instance the electricity distributor is demanding an increase of 181 percent."

40
Also, in the MTS submission dated 13 August, 2004, the table at page 11, paragraph 32, identifying pole access rates across the country, there is an update to the first set of rates identified in that table, the rates charged by Manitoba Hydro, as the arbitrator has rendered a decision and determined the rates that MTS Allstream is to pay Manitoba Hydro for pole access as follows: The 2002 rate is now $16.35, the 2003 rate is now $18, and the 2004 rate is now $19.84.

41
MS. CROWE: And that's contained in the decision of the arbitrator?

42
MS. GRIFFIN-MUIR: Yes, it is.

43
MS. CROWE: And do you have a copy of that?

44
MS. GRIFFIN-MUIR: Yes, I do.

45
MS. CROWE: And just for -- oh, there was a mistake?

46
MS. GRIFFIN-MUIR: Yeah, I did. There is a mistake. Sorry. Sorry. Actually, the 2003 rate is $17.15 and the 2004 rate is $18.

47

MS. CROWE: Perhaps, so that it's more clear, we'll enter a copy of the decision as an exhibit.

48
MR. KAISER: Any objection to that?

49
MR. RUBY: Yes, Mr. Chair. Since the last day, it's been -- and again, I'm reporting to what Manitoba Hydro's reported to me, is that apparently they've agreed that the arbitrator's decision is not confidential, but I have two objections to it nevertheless.

50
The first is that this is a private arbitration, and in my respectful submission, that being the case, it's not relevant and adds nothing probative to this hearing. It's a private dispute. The parties set their own grounds of arbitration. It's not a policy decision. It's not a decision of another public utilities board, the same way, for example, the Nova Scotia board's decision and the Alberta board's decision were.

51
And my second objection is, of course, this evidence is being filed late. As this Panel knows, we agreed to rejig the order of the witnesses. Usually, the Manitoba witnesses would have gone before the responding witnesses, that is, the witness from Manitoba Hydro, who then would have had a chance to respond to explain the decision to the extent that it was necessary. We haven't had any notice that this is going in. So we're in a position where there's now no opportunity for us to respond to it.

52
MR. KAISER: Well, in terms of responding to it, Mr. Ruby, let me understand. We have all kinds of evidence as to rates in this hearing; you would agree to that?

53
MR. RUBY: Yes, and I'm quite content my friend has put in the rates. So the Board has the rates, and I have no objection to that. But to put in the decision without any context and without any opportunity to deal with it, in my submission, it is not appropriate.

54
MR. KAISER: Now, is your client a party to the decision?

55
MR. RUBY: My client is the CEA. The CEA was not.

56
MR. KAISER: Ms. Crowe, can you help us as to why you need the decision in? The rates are in. Is there something in this decision you think that is -- we understand now, unlike the discussion last day, that this is not confidential. Can you help us as to how you'll be relying on the decision, if at all?

57
MS. CROWE: Well, I would say that it's relevant to this proceeding in the same way that the CRTC and AUB and Nova Scotia regulator decisions are, in that it provides an example of how these issues were resolved in another context, and, I would say, gives the necessary context to the rates that we have now entered and that the arbitrator determined were appropriate.

58
I note that the arbitration proceeding has come up a few times already in this proceeding, and it would be
useful to have the final decision there to clarify the record.

59
The CEA has already raised the arbitration proceeding between MTS Allstream and Manitoba Hydro.
For instance, they sent a letter to the Board on October 21st, introducing an analysis of the information
that Manitoba Hydro prepared for the arbitration proceeding in respect of productivity and administration
costs. This decision is what was ultimately decided in that respect.

60
In addition, in Mr. Ruby's cross-examination of the CCTA panel, he asked that panel on a couple of
occasions for clarification of what was going on in Manitoba, indicating that it was his understanding
there was no agreement, and asked them whether they knew about that. I would say that this arbitration
is, therefore, relevant to this proceeding and has been already raised.

61
MR. KAISER: In the event, and I say "in the event," we allow it in, and in the event Mr. Ruby has any
questions, are your witnesses familiar with the proceeding?

62
MS. CROWE: Yes, they are.

63
MR. KAISER: Mr. Mark, do you have anything on this?

64
MR. MARK: Good morning, Mr. Chair.

65
I support Mr. Ruby's objection. The decision is problematic in a few ways. Its lateness creates an obvious
problem, but the fact that it was an arbitration decision as opposed to a regulatory board decision adds to
the problems. And there's been, as I understand it, considerable discussion in the proceeding about
particular regulatory decisions that have been decided elsewhere, and my clients, and the utilities, have
had the opportunity to respond to those reasons and the principles articulated on the record, and to deal
with them in evidence. We don't have this opportunity.

66
So, in all the circumstances, we support Mr. Ruby's position, that it ought not to be part of the record.

67
MR. KAISER: Thank you.

68
Who's here for the cable association today? Oh, sorry Mr. Brett.

69
MR. BRETT: Mr. Chairman, Panel, good morning.

70
I would support Allstream in this. The decision of the arbitrator -- the arbitrator, first of all, is the current
chairman of the Manitoba Public Utilities Board. I assume that arbitration was done pursuant to
arrangements, or a contract, between Allstream and the hydro people. It's very analogous to a proceeding
by a tribunal. He took into account many of the very same issues; he went through much of the

same
analysis. We have the rates already. And, from that point of view, I think it does make sense to have it as
a back drop.

71
In addition, Mr. Ruby has already submitted a bunch of material from that arbitration, as we've heard,
selective material to bolster something -- a point he was trying to make. And, in terms of lateness, I
would -- I have some -- if there's a -- these people understand it here, so perhaps there's a chance that --
everybody's read this decision, I take it. Mr. Ruby's probably read it more than once, so if he has
questions he could ask them, perhaps with some kind of a delay or something.

72
So I don't see, on the overall scheme of things, why it shouldn't go in. The Board has traditionally been, I
think, reasonably liberal in what they let in, and then they decide the weight of what it's going to be once
it's in there. But, from our point of view, it should go in.

73
Thank you.

74
MR. KAISER: Thank you.

75
Mr. Dingwall, any submissions on this?

76
MR. DINGWALL: Yes. Up until quite recently, the Manitoba proceeding has been -- turned around
the guise of confidentiality, which, as it turns out, doesn't actually apply to it.
Mr. Ruby opened the door to looking at Manitoba in terms of the loss of productivity costs and administrative costs in his October 21st filing with the Board, which provided material that was in context of that arbitration.

77
I haven't read the decision. I'd like to read the decision. And I'd like to have the opportunity to derive
whatever argument or relevance to this proceeding might flow from reading that decision.

78
MR. KAISER: Thank you.

79
Any other submissions?

80
Mr. Ruby, a response?

81
MR. RUBY: If I may, just on two points.

82
The first is that the productivity information that the CEA submitted was in response to a question, or
request, that the Board made at the Motions Day. And -- I should be clear: What was submitted was not
what was put into the arbitrator. It was the same information, that is, the figures and facts, but not the
form. It was -- we didn't take evidence from another proceeding and merely put it in here. We answered
the Board's question with that information.

83
The second point is that it strikes me that we've had the experts in this proceeding,

particularly the
economic experts, provide, in both written form and in oral testimony, quite a bit of analysis of the other
regulatory decisions in North America, not just Canada. And they have not had an opportunity to address
this and to figure out how -- if this arbitration decision has any meaning at all for this proceeding, how it
fits in this piece.

84
Now, I note that the arbitrator's decision was made before the experts testified in this matter, so that if
MTS Allstream had wanted to put it in, it could have been put in before the experts testified, and they
would have had an opportunity to assist the Board with their views on how it fits in this proceeding. But
that wasn't done.

85
MR. KAISER: Thank you.

86
MS. CROWE: Can I make a couple of more comments?

87
MR. KAISER: Well, Mr. Ruby, I appreciate your objection, but this record is full of decisions from
around North America, of various stripes and descriptions, and full of rates. And the
Board has decided we'll allow this in.

88
Mr. Miller, can we give this an exhibit number, please?

89
MR. MILLER: Mr. Chair, if I could just interject very quickly.

90
For those who don't know me, my name is Michael Miller. I'm here for the Board today. Mr. Lyle is not
available today.

91
I understand there's a new exhibit. Ms. Crowe was kind enough to provide, I guess you would call them
brief CVs for the two witnesses today, and I think they should be entered as exhibits.

92
MR. KAISER: Thank you.

93
MR. MILLER: And I think we're at Exhibit E.4.1.

94
MR. KAISER: That's correct. Were we going to distribute copies of this to the parties?

95
MR. MILLER: Yes, I believe so.

96
EXHIBIT NO. E.4.1: CURRICULUM VITAE OF WITNESSES TERESA GRIFFIN-MUIR AND BILL KRISKI

97
MR. KAISER: And do we also have copies of the arbitration decision for the parties?

98
MS. CROWE: Yes. I've handed out some. If there aren't enough, we can make more copies. Oh -- Judith

has extra.

99
MR. MILLER: Mr. Chair, I think that would be Exhibit E.4.2.

100
MR. KAISER: Thank you.

101
EXHIBIT NO. E.4.2: COPY OF ARBITRATION DECISION IN A MATTER BETWEEN MTS ALLSTREAM AND MANITOBA HYDRO

102
MR. KAISER: Please proceed.

103
MS. CROWE: Thank you, Mr. Chair.

104
Ms. Muir, to begin with, would you please state for the Board a summary overview of MTS Allstream's pre-filed evidence.

105
MS. GRIFFIN-MUIR: Yes. Thank you.

106
Mr. Chairman, Board Members and Staff, on behalf of MTS Allstream, I would like to thank you for this opportunity to appear today. MTS is participating in this proceeding in order to support the position put forward in the CCTA's application to the Board to fix a standard province-wide rate for access to poles owned by LDCs in Ontario.

107
In Ontario, MTS Allstream operates as a new entrant in the business telecommunications market, and offers a full portfolio of business communications solutions, including data and voice connectivity, infrastructure management and information technology services, to business customers.

108
Like the cable companies represented by the CCTA, MTS must, in many instances, attach equipment to poles owned by LDCs in order to connect to customers. As such, the poles are essential facilities to which MTS Allstream requires access in order to serve its customers.

109
At the same time, the poles are a monopoly asset controlled by the LDCs. There is no free market in which MTS Allstream can select its pole access.

110
As a result of this uneven negotiating position, many LDCs have been demanding, in some cases successfully, rates for access to their poles in the range of $40 to $45. These are rates that are significantly higher than those charged in the past, and which far exceed the costs that the LDCs incur as a result of providing access to their poles.

111
In short, a rate of $40 per pole far exceeds what MTS Allstream would submit is reasonable access to this essential facility.

112
As a result, MTS Allstream submits that it is appropriate, indeed necessary, for the Board to set a standard rate for the use by communications companies of the LDC poles. MTS supports the

CCTA's
proposal in this proceeding that a pole-user charge $15.65 per pole per year would be an appropriate
standard rate. The recurring charge is based on the incremental costs incurred by an LDC as a result of a
communications company attaching to the pole, plus a reasonable contribution to fixed common costs
associated with the pole.

113
MTS Allstream also supports the CCTA's proposal that the reasonable contribution to the fixed costs
associated with the pole should be determined as a usage-based allocation of fixed costs, measured on an
embedded basis. The usage-based allocation should reflect the actual usage of the communication space
on the pole plus a proportional share of the neutral separation space. MTS Allstream agrees with the
CCTA's assumption, for the purposes of calculating a standard rate, that there will be two users of the
communication space on joint-use poles, and that it is appropriate for the same standard rate to apply
across the province.

114
MTS Allstream is fully prepared to pay a reasonable amount to access the LDC poles, and is of the view
that the rate proposed by the CCTA would ensure that the LDCs are fully compensated for providing
access to their poles. Not only would the $15.65 per-pole rate cover a distributor's actual direct costs of
making the communication space on its poles available for joint use by communications company, but it
would also provide a generous contribution to the distributor's fixed pole costs. Such a rate would be in
keeping with the rates set in other jurisdictions in Canada.

115
Finally, without a standard rate set by the Board, the uneven bargaining position of the LDCs and the
communications companies will persist, and the LDCs will likely continue to charge rates that far exceed
their costs in providing access to their poles. These poles are a monopoly asset and should be regulated.

116
MS. CROWE: Thank you, Ms. Muir.

117
On October 26, during this hearing, the Board requested that MTS Allstream comment and provide
evidence on issue number 5 before the Board in this proceeding, that is, on the issue of whether, and to
what extent, any new licence conditions set by the Board as a result of this proceeding should impact
existing contracts.

118
Ms. Muir, would you please summarize MTS Allstream's position for the Board on this issue, on whether
or not -- and more specifically, in regards to whether or not any rate set by the Board should apply to
existing contracts.

119
MS. GRIFFIN-MUIR: Yes. It is MTS Allstream's position that, should the Board set rates for access by
communications companies to the poles owned by LDCs in Ontario, such rates should apply uniformly, including in those instances in which there is an existing
contract in place between an LDC and a communications company for the pole access.

120
To put it simply, where regulation is warranted, it is MTS Allstream's view that the regulation should be applied consistently. MTS Allstream submits that the same underlying market conditions that make it vital for the Board to set licence conditions in this monopoly control over pole access where parties have been unable to conclude a contract for pole use, make it equally vital that any rates set by the Board be applied where there is an existing contract, immediately upon the Board rendering a decision as to what that rate should be.

121
On Motions Day, the Board already made note of the fact that the poles owned by the LDCs are both monopoly assets and essential facilities. These poles are essential facilities for both LDCs and communications companies. In many instances, communications companies, like MTS Allstream, must have access to the poles in order to deliver services to their customers. And as the poles are monopoly assets, there is no free market in which MTS can select its pole access.

122
Consequently, in certain circumstances where MTS Allstream needed access to the pole owned by an LDC in order to deliver service to a customer, MTS was faced with two choices: Either deliver service to the customer and enter into an agreement with an LDC for pole access at very high rates, or lose the customer's business. In other words, in order to deliver service to a customer, a communications company, such as MTS Allstream, may have had no real choice but to enter into a contract for access to poles owned by an LDC at rates that far exceeded what the communications company considered to be just and reasonable.

123
Accordingly, MTS Allstream submits that it is necessary that any rates set by the Board apply to situations where a contract was entered into, in addition to situations where parties have not been able to negotiate a new agreement for pole access, or the renewal of an old agreement.

124
If the Board sets rates for pole access and does not apply such rates where there is an existing contract, there is the potential for discriminatory access and undue preference in respect of competing entities, in terms of both communications companies and LDCs. If the pole sets a pole access rate that is lower than the rates paid under contract, and the Board fails to apply that rate to all pole access situations, then communications companies that do not have a current contract or whose contract explicitly contemplates the possibility that the Board will set a standard rate, would benefit from the new rates, while those communication companies that had no choice but to enter into a contract would have to continue to pay higher rates for a period of time.

125
Similarly, the Board would be favouring certain LDCs. An LDC with more favourable contracted rates would be permitted to generate greater revenue than the LDCs that have not entered into agreements with communications companies seeking access to their poles. If the Board sets a rate that is higher than a

contracted pole access rate, then the inequities would be reversed.

126
To conclude, MTS is of the position that regulation of pole access rates is required to ensure that parties
requiring access are provided such access on fair, equitable, and timely terms. The rates, terms and
conditions determined by the Board should apply to all parties as soon as these come into effect.
Consistency in the application of any regulation is required, both for reasons of administrative simplicity
and, more importantly, to avoid discriminatory access or undue preference in access to LDC poles.

127
MS. CROWE: Ms. Muir, the CCTA has indicated that a large majority of the agreements that CCTA
members have in place contain a retroactivity clause that would enable the agreement to
reach back in time and adjust the pole rental rate to match the rate that the Board might
set as a result of this proceeding. Does MTS Allstream have any contracts that contain a
retroactivity clause like the one that the CCTA has described?

128
MS. GRIFFIN-MUIR: Yes. I believe that of our current agreements there is one contract, that I am
aware of, with such a retroactivity clause. MTS also has one other current
contract for pole access that contemplates that the rates set out in that contract
may be replaced by any rate agreed to by the MEA and the CCTA, if both parties
to the contract agree. It does not contemplate that there would be a retroactive
adjustment if the Board were to set a rate for pole access.

129
MS. CROWE: And can you describe the situation with the remainder of MTS Allstream's contracts that
it has entered into with the LDCs in Ontario for pole access.

130
MS. GRIFFIN-MUIR: The other current contracts that MTS Allstream has with LDCs in Ontario for
pole access do not contemplate the possibility that the Board will set a rate for
access to these poles. In some instances, MTS Allstream is also on poles where a
former agreement with the LDC has expired and parties have been unable to
conclude a new contract.

131
MS. CROWE: Thank you, Ms. Muir.

132
I'll just turn to Mr. Kriski, briefly, now. Mr. Kriski, how long have you been with MTS Allstream?

133
MR. KRISKI: Good morning, everyone. I've been with MTS Allstream for 30 years.

134
MS. CROWE: And can you describe your responsibilities there.

135
MR. KRISKI: My current responsibilities are outside plant standards and methods, which includes
policies, procedures and guidelines, and also administering certain outside plant

agreements. The agreement that I'm responsible for is the support structure agreement,
both for MTS as a licensee and as an owner.

136
MS. CROWE: Thank you. Now, there seems to have been some confusion in this proceeding about the
communications space on a distribution pole, in terms of how big that space is and the
number of poles -- of attachments that can be made in a 2-foot communication space.
Could you please comment briefly on what the communication space looks like.

137
MR. KRISKI: In Manitoba, the communication space consists of a space that is 2 feet for a maximum
of three attachments, and an additional 3 feet, 3 and a quarter feet for separation between
the communication carriers and the power company.

138
Now, in our own agreement with Manitoba Hydro, we are allowed a maximum of three attachments. The
bottom, or the lowest, attachment could be as low as 17 and a quarter feet from the ground. And it could
also sag lower than that in mid-span. Providing we meet the CSA standards for clearances over the
ground, that 17.25 feet, in many cases, would allow us to make those three attachments.

139
But if, in some cases, we couldn't make or couldn't clear the -- make the CSA standard for clearances,
then we would have to pay make-ready costs, which would give us an extra 5 feet on the pole.

140
Now, when this occurs, that doesn't necessarily mean that that 2-foot space stretches out to become a
5-foot space or a 4-foot space. What that actually means is, the pole will use a 5-foot higher pole, and
that 2-foot space would actually move 5 feet up the pole, giving us more clearance at ground level.

141
MS. CROWE: Thank you.

142
I just have one more question. During this proceeding, our attention has been drawn a couple of times to
page 3 of Mr. Ford's evidence for the CCTA. There is a paragraph there that talks about the incumbent's
use -- the incumbent telephone company's use, in Manitoba, of Manitoba Hydro poles.

143
For the purposes of clarifying the record, could you please comment on that paragraph, and describe what
the situation is in Manitoba.

144
MR. KRISKI: And I assume that you're referring to the second paragraph here?

145
MS. CROWE: Oh, yes.

146
MR. KRISKI: Historically speaking, that paragraph would be true. However, today, in some cases,
MTS no longer controls the communication space for some of the poles in Manitoba,
although we do control a number of poles inside Winnipeg, point of communications
space.

147
Where we control the space, we would then sublease that area back to the cable operators at a rate of --
regulated CRTC rate of $9.60. Where we don't control the space, then we would pay Manitoba Hydro the
rate that was just mentioned here, with the -- during the arbitration case. As well, the cable operators also
have an agreement that they would have to pay Manitoba Hydro.

148
Our rates and the cable operator rates are very, very close in -- very close. They're not identical, but
they're very similar to the rates that, I've noticed, have been put forward here by the CCTA.

149
MS. CROWE: Thank you. Those are all of my questions.

150
MR. KAISER: Thank you.

151
PROCEDURAL MATTERS:

152
MR. BRETT: Mr. Brett, before you -- before we proceed, your clients and the LDCs have agreed in the
settlement agreement that the Board's decision would not apply to existing contracts;
correct?

153
MR. BRETT: Yes. That's correct, as I recall, yes. That's right.

154
MR. KAISER: Now, we've heard - and we all understand this issue about retroactivity - we heard
evidence about how many of your clients had contracts that provided for an adjustment
to the access charge in the event that the Board ruled on that matter.

155
Would you have any objection if the ruling was that existing contracts were exempt, unless they had no
provision for a retroactive adjustment of access charges, in which case it would come under the Board's
ruling?

156
MR. BRETT: Let me just understand that. Unless they had --

157
MR. KAISER: No provision for retroactive adjustment.

158
MR. BRETT: Many of our contracts - I just want to make sure I have this straight - many of our
contracts have this, as you know, this retroactivity provision in them. So they would be --
they would trigger -- by their very terms, they do this. So you're saying, those types
would be --

159
MR. KAISER: Exempt.

160
MR. BRETT: -- exempt. But the type that ...

161
MR. KAISER: Well, the MTS-type contracts that apparently don't have that provision.

162
MR. BRETT: Yeah. I guess what I'm a little bit stuck on is the fact that we agreed with our -- we agreed with the LDCs in the settlement conference on this point. And I don't know whether I can re -- I don't know whether it's appropriate that we be --

163
MR. KAISER: Well, I'm going to ask them next. I'm just trying to get your position as to whether you would object to that. I'm not asking you to agree, or not agree, but would it cause you any harm -- your client any harm?

164
MR. BRETT: No, I don't think it would -- I'm sorry. These would be not exempt. In other words, the Board's decision -- what you're saying is, if there's a contract out there that's signed without a retroactivity provision in it --

165
MR. KAISER: It would not be exempt.

166
MR. BRETT: -- the Board's decision would supersede whatever rate's in that contract.

167
No, I don't think it would cause us any harm -- I don't think it would. I'd be a little more comfortable if I could check with my client before I gave --

168
MR. KAISER: Okay.

169
Mr. Mark, can you help me?

170
MR. MARK: Yes, Mr. Chairman.

171
I suppose -- I apologize, I should have introduced myself for the record when I spoke earlier. I'll do so now. My name is Alan Mark. I appear this morning in place of Ms. Friedman for the Electricity Distributors Association.

172
Mr. Chair, there's clearly an agreement. There's a settlement agreement between Mr. Brett's clients and the LDCs regarding existing contracts, and that agreement, by its terms, deals with contracts which don't have retroactivity adjustment clauses. We didn't need a settlement agreement to deal with contracts which, by their terms, provided for what would happen in the event of a ruling -- regulatory ruling.

173
So, by its terms, the settlement agreement is an understanding between Mr. Brett's clients and the LDCs that this ruling won't affect those contracts. So, in my respectful submission, the Board ought to let that settlement agreement stand, and should not apply this ruling to contracts which don't have re-openers in them. That's just, essentially, taking the settlement agreement and throwing it out the window. And Mr.

Brett's clients have agreed to this.

174
If the Board is disposed to make some other disposition with respect to MTS Allstream, the Board can do
that. We'll make submissions on that at the relevant time. But it ought not to do that with respect to the
members of the CCTA who have, by settlement agreement, agreed that -- how this Board's ruling will be
applied to contracts which don't have retroactivity adjustment provisions. And we would object to any
disposition which didn't incorporate that settlement agreement.

175
MR. KAISER: No, I understand there's a settlement agreement, and it is what it is.

176
What I'm trying to find out is, how would it harm your client? If the Board --

177
MR. MARK: Other than -- other than --

178
MR. KAISER: If the Board made such a ruling, that the grandfathering, as you have agreed with the
cable association, was in place, unless there were no retroactivity clauses, would that
impact adversely on your client in some respect?

179
MR. MARK: And I take it by "adverse impact" you mean other than losing the benefit of the contracts
they have in the first place, and then secondly, the settlement agreement they have?

180
MR. KAISER: Well, you clearly wouldn't lose the benefit of the contracts that had a retroactivity clause.

181
MR. MARK: No question. We're agreed on that. But the settlement didn't deal with those contracts, the
settlement agreement only dealt with the contracts which, by their terms, were not re-opened.

182
MR. KAISER: No, I think it dealt with all contracts -- dealt with all existing agreements.

183
MR. MARK: Well, but there was no need, Mr. Chair, to have --

184
MR. KAISER: There may have been no need, but it did deal with all existing agreements. There are
other clauses in the agreements other than the price clause.

185
MR. MARK: Yes; that's correct.

186
MR. KAISER: And my assumption was that maybe your clients and the cable people didn't want to
renegotiate the whole ball of wax and said, Let's just exempt everything that exists,
because the price will get adjusted retroactively anyway.

187
Let me ask you this: Are there a significant body of contracts out there in place, existing contracts,
without retroactivity clauses that you're somehow trying to --

188
MR. MARK: I don't know the answer to that question, and in view of the settlement agreement. We haven't explored that issue with our clients, which is another reason why, in my respectful submission, it's inappropriate for the Board to enter into that now. We haven't, in view of the settlement agreement, haven't dealt with that issue in our evidence, either the lay evidence or the expert evidence. In my submission, the Board doesn't have the information it requires to consider that issue.

189
MR. KAISER: Well, do you think you could provide that information? Could you tell us if, in the contracts that you have with the cable companies, your clients, are all of them subject to retroactivity clauses or is there any significant portion that does not have retroactivity clauses?

190
MR. MARK: Just a moment, Mr. Chair.

191
Mr. Chair, we don't have that information, in terms of number of contracts, which we can provide to the Board. And unfortunately, that information was not part of the interrogatory request information which the Board instructed us to direct to the LDCs. So that information has not been gathered.

192
I can only tell the Panel that my understanding is there are a material number of contracts which don't have the re-openers in them. So it's not, as I understand, a trivial issue. And because the information request was not included in the Board mandated information requests, we simply don't have that data to provide to the Board.

193
MR. KAISER: Right. I understand. Did you have any questions, Mr. Mark, of this panel?

194
MR. MARK: No, I don't, Mr. Chair.

195
MR. KAISER: Mr. Ruby?

196
MR. RUBY: Yes, Mr. Chair, though I would appreciate the Board's direction on one point. The Board accepted the arbitration decision. In a sense, that takes me a bit by surprise. I'm not sure that I would have any questions on it, but what I would have to do is go back to Manitoba Hydro to try and, if necessary, provide the Board with more fulsome information. What I propose to do is cross-examine on issues today not related to the arbitration agreement, and if necessary, in writing, propose back to the Board if I find there is a reason to revisit the arbitration agreement. The arbitration agreement is being put in for the first time today.

197
MR. KAISER: I understand.

198
MR. RUBY: And I may be able to contribute in response -- Mr. Chair and Panel, it may

be helpful to
note, there is at least one agreement on the record of this proceeding that does not have a
retroactivity clause, that is the Hydro One agreement.

199
MR. KAISER: Is that the one with the OCTA?

200
MR. RUBY: It has since been renegotiated. In fact, it's a current agreement that's in force. And in that
case, it would be my submission that what the parties do when it comes to retroactivity
or not, it's a risk mitigation exercise. Some of them decide to mitigate the risk of uncertainty by putting in a retroactivity clause, and some decide that they're going to
have a fixed price and that if, for example, this Board sets a lower price, well one party
will suffer the consequences. And if the Board imposes a higher price then, for at least
the term of the agreement, the other party will suffer the consequences. And it's my submission that the Board should leave that to the parties.

201
That said, I note that in the settlement agreement, what the parties -- not to put too fine a point on it, have
said is that when the existing terms of these agreements come to an end, whatever the Board's ruling is
will apply. So that would deal with, what I think has been called, an "evergreen provision," that is,
automatic renewals of the agreement won't happen. So that the Board's ruling in this matter will apply
within the terms of those agreements, or at the end of the term, I should say.

202
MR. KAISER: Now, you're sure about that with respect to the Hydro One agreement? I thought Mr.
O'Brien gave us some evidence that he negotiated that on behalf of the OCTA with
Hydro One and it had a retroactivity clause. Mr. Brett, can you help me?

203
MR. BRETT: I notice that Ms. Pantusa is reaching for the mike, Mr. Chair. She might be able to give
us a view on that.

204
MS. PANTUSA: Thank you, Mr. Brett.

205
None of Hydro One's agreements have a retroactivity provision, Mr. Chair, and they do have renewal
clauses, which is the clause that Mr. Ruby was referring to. So if the Board decided to regulate, then that
decision would come into effect at the beginning of that renewal clause. So the existing term would
continue to be governed by the existing terms and conditions and the existing rate, and then the new rate
would kick in, if there was a new rate set by the Board.

206
MR. KAISER: Right. And how long does that contract go? When does it terminate?

207
MS. PANTUSA: It terminates, I guess, this year? December 31st of this year. Yeah.

208
MR. KAISER: So it's not going to be in force much longer anyway.

209
MS. PANTUSA: No, that's right. That's right.

210
MR. KAISER: We won't stay awake worrying about the Hydro One contract.

211
Coming back to the arbitration decision, Mr. Ruby, we had some evidence from Manitoba Hydro. We'd like you to try and deal with this, if you can, today. If you need a break to read it -- you must have read this decision.

212
MR. RUBY: I had, very briefly, but until very recently, I was told the same way the Board was that it was confidential.

213
MR. KAISER: Well, I think there was a debate on that, as I recall the discussion last day.

214
MR. RUBY: There was. Since it's not my agreement, I wasn't in a position to do anything but do what I was told, to a certain extent.

215
MR. KAISER: Well, do your best today. Try, if you can, to deal with it in the course of your examination today, if you can. If you have to come back, we'll here submissions on that, but our preference is we get on with this.

216
MR. RUBY: Thank you.

217
MTS ALLSTREAM PANEL 1 - GRIFFIN-MUIR, KRISKI; RESUMED:

218
T.GRIFFIN-MUIR; Previously sworn.

219
B.KRISKI; Previously sworn.

220
CROSS-EXAMINATION BY MR. RUBY:

221
MR. RUBY: Ms. Griffin-Muir, one of the answers to interrogatories given by MTS Allstream was an answer to Interrogatory No. 3 of the CEA. I don't propose to take you to it, but there was a footnote referring to a pole access dispute that proceeded in front of the CRTC involving a company called ENMAX. Are you familiar with that proceeding?

222
MS. GRIFFIN-MUIR: Yes, I am.

223
MR. RUBY: Okay. And I take it you know ENMAX is the electricity distributor for the City of Calgary.

224
MS. GRIFFIN-MUIR: Yes, I am aware of that.

225
MR. RUBY: Okay. I've already provided a copy of this to Ms. Crowe, but I take it that that proceeding in front of the CRTC involving ENMAX has come to an end?

226
MS. GRIFFIN-MUIR: Yes, it has, I guess as a result of the Supreme Court decision. And the Commission subsequently sent a letter to a representative for Bell West. A letter was sent, basically, outlining that those two parties had come to terms.

227
MR. RUBY: Thank you. If I may, Mr. Chair, I have a copy of the letter from the CRTC for the record.

228
MR. KAISER: Thank you. Mr. Miller, should we mark that?

229
MR. MILLER: Yes, Mr. Chair. That's -- I've lost track of where we are. E.2.5.

230
EXHIBIT E.4.3: LETTER FROM CRTC TO A REPRESENTATIVE FOR BELL WEST REGARDING THE ENMAX HEARING

231
MR. MILLER: E.4.3, I'm sorry.

232
MR. KAISER: Mr. Ruby?

233
MR. RUBY: Thank you.

234
Now, Ms. Griffin-Muir, MTS Allstream's position is, as we've heard, that the Board's ruling should apply to existing agreements. Can you tell me what a municipal access agreement is?

235
MS. GRIFFIN-MUIR: That would be an agreement that you would have with a municipality for rights of way.

236
MR. RUBY: And I take it that MTS Allstream has been involved in proceedings before the CRTC with respect to municipal access agreements and access to municipal rights of way.

237
MS. GRIFFIN-MUIR: Yes, they have.

238
MR. RUBY: And some of those proceedings have involved MTS Allstream seeking access to municipal lands.

239
MS. GRIFFIN-MUIR: That's correct; yes.

240
MR. RUBY: MTS Allstream's position, is it fair to say, is that some municipalities are demanding unreasonable municipal access agreements in return for access to the rights of way.

241
MS. GRIFFIN-MUIR: Yes, that would certainly be our position, that some of the terms -- I guess our position would be similar to the position we've taken in this proceeding,

that some of the terms demanded by a monopoly access supplier are unreasonable.

242
MR. RUBY: Now, we've already heard in this proceeding about what's been, I think, called the Ledcor case. This is the case -- I take it you're familiar with it, first of all?

243
MS. GRIFFIN-MUIR: Decision 2000-0123.

244
MR. RUBY: Right. This is the decision where the CRTC allowed the access to the city streets in Vancouver?

245
MS. GRIFFIN-MUIR: Yes. This is the decision where the Commission set the terms of access between the City of Vancouver and Ledcor -- I don't know their full name, Ledcor. And also established guidelines for determining the terms, the rates, terms and conditions of access to municipal rights of ways for carriers and municipalities.

246
MR. RUBY: Now, the Ledcor case was a case where no municipal access agreement was in place; is that right?

247
MS. GRIFFIN-MUIR: In the case of Ledcor and the City of Vancouver, that was the case, yes.

248
MR. RUBY: Thank you. Now maybe we can switch over to talk about the situation where a telecom company, like MTS Allstream, has signed a municipal access agreement before the Ledcor decision was handed down. I take it MTS Allstream's position is that that municipal access agreement should be overturned; is that right?

249
MS. GRIFFIN-MUIR: Our position is actually similar to the position that we've taken here, in that, once the expert tribunal has established what the appropriate rates, terms and conditions should be, they should be replaced in the existing contract.

250
MR. RUBY: And I take it you wouldn't want to take a conflicting position in this proceeding versus what you're doing at the CRTC?

251
MS. GRIFFIN-MUIR: Well, I wouldn't want to take a conflicting position simply because, I think, once regulation is warranted and once it's clear that there is no negotiating power or it's uneven, then an expert tribunal is referred to and that tribunal establishes the rates, terms and conditions of access, they should be applied uniformly.

252
MR. RUBY: If we can turn to the Manitoba arbitration decision, please. I take it that this arbitration grew out of failed negotiations over the price of pole access between MTS Allstream and Manitoba Hydro; is that right?

253
MS. GRIFFIN-MUIR: Yes, that's correct.

254
MR. RUBY: It was just the price, though, that was at issue?

255
MR. KRISKI: It was just the rates, correct.

256
MR. RUBY: Just the rates. And I gather there had been extensive negotiations started in 2000 or 2001 between those two companies.

257
MR. KRISKI: I believe the negotiations started, approximately, September 2001.

258
MR. RUBY: Okay. And prior to that, Manitoba Hydro and MTS Allstream were both Crown corporations; is that right?

259
MR. KRISKI: Some time prior to that, correct.

260
MR. RUBY: And they didn't have any trouble with the rates back then?

261
MR. KRISKI: I wouldn't say that's entirely true. During the arbitration case I did review a lot of documentation regarding previous negotiations, and it seemed that every time I picked up a new negotiation document there always seemed to be a difficulty in reaching rates. It would always seem to be a contentious issue. It seemed to get more difficult as years went on, right up until this past agreement when it was impossible to reach a rate with Manitoba Hydro.

262
MR. RUBY: Well, until this agreement, is it fair to say that a negotiated solution was always reached?

263
MR. KRISKI: Before this rate.

264
MR. RUBY: Right. Okay. And when negotiations started -- let me even jump to the chase. Reading, as I did briefly, this agreement, tell me if this is fair, it struck me that the real dispute in this particular arbitration was whether MTS Allstream would have to pay a one-tenant charge for all joint-use poles or -- sorry, a one-tenant charge for some joint-use poles and a two-tenant charge where there were two tenants, versus a two-tenant charge on all poles. Is that fair that that was really the essence of the dispute here?

265
MR. KRISKI: Yes, that was the essence. Basically, what it was is that when we were in the negotiation -- or in the arbitration, they used the CRTC 9913 formula. Only instead of applying it the way CRTC did, they misapplied it and built one rate for one pole, as opposed to the CRTC ruling where it said they were going to establish a rate for a tenant on a pole, knowing that the pole may accommodate two users.

266

MR. RUBY: And the figures, you mentioned the CRTC decision, the figures that were used in the arbitration in Manitoba, those were the Manitoba data; is that right?

267
MR. KRISKI: Correct.

268
MR. RUBY: Okay. Those are my questions, Mr. Chair.

269
MR. KAISER: Thank you, Mr. Ruby.

270
Any other parties wish to question this panel? Mr. Dingwall?

271
CROSS-EXAMINATION BY MR. DINGWALL:

272
MR. DINGWALL: I have one question. Can you give me an indication of what the annual amount of pole rental fees that MTS Allstream would incur in the Province of Ontario would be?

273
MS. GRIFFIN-MUIR: I'm afraid I'd have to undertake to give you that information. I don't know it off hand.

274
MR. DINGWALL: What I'm trying to get to, Mr. Chairman, is the materiality of any variation from the retroactivity provisions. So I'm going to request a best-efforts undertaking, if that information is available within the very near future.

275
MR. KAISER: Ms. Crowe, would you have any problem with that?

276
MS. CROWE: No, we have no problem. We'll undertake to do that.

277
MR. KAISER: All right. Mr. Miller, can we reserve a number for that?

278
MR. MILLER: That would be Undertaking F.4.1.

279
UNDERTAKING NO. F.4.1: TO PROVIDE THE ANNUAL AMOUNT OF POLE RENT FEES INCURRED BY MTS ALLSTREAM IN THE PROVINCE OF ONTARIO

280
MR. KAISER: Anything further, Mr. Dingwall?

281
MR. DINGWALL: No, sir. Thank you, panel. That was my question.

282
MR. KAISER: I just have one question. Mr. Miller, did you have any questions?

283
MR. MILLER: Perhaps, Mr. Chair, just very briefly one or two questions.

284
CROSS-EXAMINATION BY MR. MILLER:

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MR. MILLER: Ms. Griffin-Muir mentioned that she was -- I believe she mentioned that one of the contracts MTS has a retroactivity clause.

286
MS. GRIFFIN-MUIR: That's correct, yes.

287
MR. MILLER: And how many contracts are there in total? I guess the question would be, how many do not have the retroactivity clause?

288
MS. GRIFFIN-MUIR: Of the existing contracts, there are five.

289
MR. MILLER: There are five. And what is the term of those contracts, as in, when do they expire?

290
MS. GRIFFIN-MUIR: Two appear to expire at the end of this year. One more at the end of next year -- sorry, three appear to expire at the end of this year, another at the end of next year, and then there's a number of contracts where I'm not clear.

291
MR. MILLER: I'm sorry, you said there were five.

292
MS. GRIFFIN-MUIR: Five. Yes, there are five.

293
MR. MILLER: Okay and you've mentioned --

294
MS. GRIFFIN-MUIR: Four.

295
MR. MILLER: -- four of them now, and you're not certain when the other --

296
MS. GRIFFIN-MUIR: No. No, I'm not.

297
MR. MILLER: Those are my questions, thank you.

298
QUESTIONS FROM THE BOARD:

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MR. KAISER: Ms. Griffin-Muir, one question, if I can. When you come to attach to a hydro pole, an LDC pole in Ontario, is it likely there's already two attachments there, a telco and a cable company? Or do you know?

300
MS. GRIFFIN-MUIR: I don't know off hand. I would say that it's likely there are at least one of those two attachments, and I would say likely two, but I couldn't tell you definitively if that's the case.

301
MR. KAISER: All right. Thank you.

302
That completes the evidence for today, Mr. Miller, I believe?

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MR. MILLER: That's right.

304

PROCEDURAL MATTERS:

305

MR. KAISER: Are we scheduled to come back?

306

MR. MILLER: We're scheduled to appear again on Wednesday. There was some question as to whether or not it would be necessary to sit on Wednesday. Perhaps I could ask Mr. Dingwall to -- I believe he has a few questions, but there may be a chance that they can be done by -- I'll let Mr. Dingwall address this.

307

MR. KAISER: It was Mr. Marks' panel, was it, that was coming back?

308

MR. MARK: Yes, sir, the CCTA, as you know, has indicated that they don't have questions. Mr. Dingwall has submitted a list of four questions that he would have for our panel. He gave them in advance because they are accounting questions, which our panel would not be able to answer without some preparation. Having looked at the questions, we're content to take those as written questions and give written replies. All the panel can do is gather the information. It wouldn't be equipped to answer further cross-examination questions on them in any event. So that may be the appropriate way to proceed, if Mr. Dingwall is agreeable.

309

MR. DINGWALL: I would be content with that. I note that this panel was originally comprised to speak to the issue of the negotiations, and given the Board's comments on the first day of this matter, I did not have any questions with respect to those negotiations.

310

However, I did have some questions with regard to the regulatory treatment and accounting treatment of a number of the costs that make up some of the costs that are trying to be determined as rental costs. And I've provided those to counsel for the EDA with the view that they can hopefully respond to those. And as they may not be questions to which the specific panel members might have an expertise, nevertheless, this is the only opportunity to ask those questions of that party. So I'm content that Mr. Mark would provide those responses in writing at an identified time frame.

311

MR. MARK: Yeah, and we're content to make the inquiries where they have to be made to get those answers.

312

MR. KAISER: Thank you very much, Mr. Dingwall. We appreciate that cooperation. Mr. Mark, we appreciate that cooperation. We won't need to hear from your witnesses on Wednesday, in that event.

313

MR. MARK: Thank you, Mr. Chair.

314

MR. KAISER: Mr. Miller?

315

MR. MILLER: I'm wondering, Mr. Chair, if we should deal with the issue of final argument, then.

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MR. KAISER: Yes. I think we had put that over today.

317

Mr. Brett, do you have any comments?

318

MR. BRETT: Well, Mr. Chairman, we normally would have -- as you know, we've agreed, I think at the settlement conference, I've suggested to the Board that we would proceed by way of argument in writing. And you have also asked us whether we would, having filed argument in writing, whether we would be available to answer questions on those arguments. And I believe the answer we gave you was, yes. So that's one piece of background.

319

The other is that typically, as you know, we would have that argument -- first an argument in-chief come in fairly soon after the end of the evidentiary portion of the hearing, maybe something like five or six days, followed by intervenors' arguments about ten days later, followed by a reply argument. So I'm really in your hands on this. I think we would be prepared to file an initial argument early next week.

320

MR. KAISER: Thank you.

321

Mr. Mark, how long would it take you to reply?

322

MR. MARK: The schedule Mr. Brett has proposed would be satisfactory. I'll just add, Mr. Chairman, I'm in a bit of an awkward position. I'm here this morning because Ms. Friedman, unfortunately, had a mishap which has taken her out of work, and she will be out of commission, I suspect, for some time. And while I have been generally apprised of what's gone on in the proceeding, it will take me some time to do what's necessary to prepare final argument, but I believe we can accommodate the schedule that Mr. Brett mentioned. If there was submissions in-chief next week, ours to follow in ten days, I believe we could do that.

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MR. KAISER: Mr. Ruby?

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MR. RUBY: That's fine, Mr. Chair.

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MR. KAISER: Ms. Crowe?

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MS. CROWE: That's fine with us.

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MR. KAISER: Mr. Dingwall?

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MR. DINGWALL: That's fine, sir.

329
MR. KAISER: Any other parties wishing to comment on the procedure for argument?

330
All right. Well, this completes, Mr. Miller, I believe, you'll correct me if I am wrong, the evidentiary portion.

331
MR. MILLER: That's right.

332
MR. KAISER: Having heard the submissions of counsel, I think this would be acceptable to the Board. I suppose we can advise them in writing, just to confirm what we've discussed here today, or unless you want to do it on the record now?

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MR. MILLER: Perhaps, we could do it on the record, Mr. Chair. Is that acceptable?

334
MR. KAISER: All right. So, Mr. Brett, your argument will be filed when? What day?

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MR. BRETT: I was going to suggest next Tuesday, sir.

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MR. KAISER: All right. So what's the date of that?

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MR. MILLER: That's November 16th.

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MR. KAISER: And then the response from Mr. Mark and Mr. Ruby, I guess all of the other parties, will be filed, what, ten days later? Is that what we said?

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MR. MARK: Yeah, I would have thought MTS should go -- should also be on the same schedule as Mr. Brett.

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MR. KAISER: Yes, I guess we should. Ms. Crowe, if you can file at the same time as Mr. Brett.

341
MS. CROWE: That's all right. Do we also get a right of reply then?

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MR. KAISER: Yes, you get another kick at the can at the end.

343
MS. CROWE: Thank you.

344
MR. KAISER: So then, ten days after that Mr. Mark and Mr. Ruby and Mr. Dingwall and anyone else. And then, Mr. Brett, how long do you need to file a reply? Is five days enough?

345
MR. BRETT: That's enough, sir, yes.

346

MR. KAISER: Yes. You have those date, Mr. Miller.

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MR. MILLER: Yes. Ten days after the 16th would be Friday, the 26th of November.

348

MR. KAISER: Right. Five days after that is when?

349

MR. MILLER: Would that be business days or calendar days?

350

MR. KAISER: Let's call it business days.

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MR. MILLER: So I guess it would be the following Friday, then, which would be December the third.

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MR. MARK: Mr. Chairman, business days would, with respect, take us to Monday the 29th, I think.

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MR. MILLER: Oh, I'm sorry.

354

MR. MARK: For ours. So I think that's the schedule we should be working towards.

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MR. KAISER: And then the five days after that, Mr. Miller, is when?

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MR. MILLER: December the 6th.

357

MR. KAISER: December the 6th, for reply? Is that acceptable to everyone?

358

Thank you very much. We appreciate the cooperation in the course of this hearing, and we'll endeavour to get our decision out as quickly as we can, once we have had an opportunity. We will come back to you, incidentally, at some point in this process if we wish to convene a hearing to ask questions. I think we'll do it all in one day, so it would be following submission of all arguments, and we'll let you know whether that's necessary or not. Thank you very much.

359

--- Whereupon the hearing adjourned at 10:36 a.m.