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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

1

RP-2003-0249

2

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.

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RP-2003-0249

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8 NOVEMBER 2004

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HEARING HELD AT TORONTO, ONTARIO

6

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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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:

285
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:

299
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?

303
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.

316
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.

323
MR. KAISER: Mr. Ruby?

324
MR. RUBY: That's fine, Mr. Chair.

325
MR. KAISER: Ms. Crowe?

326
MS. CROWE: That's fine with us.

327
MR. KAISER: Mr. Dingwall?

328
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?

333
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?

335
MR. BRETT: I was going to suggest next Tuesday, sir.

336
MR. KAISER: All right. So what's the date of that?

337
MR. MILLER: That's November 16th.

338
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?

339
MR. MARK: Yeah, I would have thought MTS should go -- should also be on the same schedule as Mr. Brett.

340
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?

342
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.

347
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.

351
MR. MILLER: So I guess it would be the following Friday, then, which would be December the third.

352
MR. MARK: Mr. Chairman, business days would, with respect, take us to Monday the 29th, I think.

353
MR. MILLER: Oh, I'm sorry.

354
MR. MARK: For ours. So I think that's the schedule we should be working towards.

355
MR. KAISER: And then the five days after that, Mr. Miller, is when?

356

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.