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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

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RP-2003-0249

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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.

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RP-2003-0249

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28 OCTOBER 2004

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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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UNDERTAKINGS

--- Upon commencing at 11:04 a.m.

MR. KAISER: Please be seated. Mr. Lyle.

MR. LYLE: Good morning, Mr. Chair. I believe Ms. Friedman's panel of utility executive witnesses is here to give evidence-in-chief.

MR. KAISER: Thank you. Ms. Friedman.

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?

MR. STOKMAN: No.

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.

EDA PANEL 1 - STOKMAN, CHARRON, KOSNIK, WEBBER:

A.STOKMAN; Sworn.

D.CHARRON; Sworn.

24
T.KOSNIK; Sworn.

25
B.WEBBER; Sworn.

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EXAMINATION BY MS. FRIEDMAN:

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MS. FRIEDMAN: Mr. Stokman, we'll start with you. In CCTA response to Board Interrogatory No. 2, it is stated that:

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"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.

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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.

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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.

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MS. FRIEDMAN: What rate are you looking for, for 2004?

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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.

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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.

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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?

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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.

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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.

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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.

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MS. FRIEDMAN: Do Cogeco attachments remain on your poles today?

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MR. CHARRON: They do.

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MS. FRIEDMAN: And have invoices been set for access rates?

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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.

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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?

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MR. CHARRON: That particular rate in 2001 was $16.84 per pole.

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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?

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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.

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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.

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MS. FRIEDMAN: Can you explain what led to it?

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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.

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MS. FRIEDMAN: Fair and reasonable in what way?

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MR. WEBER: To recover actual costs.

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MS. FRIEDMAN: On Tuesday, October 26th, Mr. Greenham testified at line 735 as follows, and I'll just quote it to you:

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"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?

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MR. WEBER: They've not applied.

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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.

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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.

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MR. KAISER: Thank you.

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You're excused now. Thank you very much for coming. We'll see you back on November the 10th.

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MR. KAISER: Mr. Ruby.

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MR. RUBY: Mr. Chair, with your permission, we'd ask Dr. Mitchell to be the next witness.

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MR. KAISER: Please proceed.

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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.

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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.

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EDA AND CEA PANEL 1 - MITCHELL:

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B.MITCHELL; Sworn.

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MR. KAISER: Mr. Ruby.

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EXAMINATION BY MR. RUBY:

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MR. RUBY: Thank you, Mr. Chair.

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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.

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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.

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MS. FRIEDMAN: Sorry, speak closer into the microphone, if you can, Dr. Mitchell.

133

DR. MITCHELL: Yes.

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MS. FRIEDMAN: Thank you.

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MR. RUBY: And Dr. Mitchell, if you could please, in brief, outline your employment history for the Board.

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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?

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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?

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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?

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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.

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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.

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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?

319
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?

326
DR. MITCHELL: Only in the most summary form.

327
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.

335
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:

338
"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?

341
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.

346
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.

356
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?

360
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.

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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.

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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?

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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.

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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.

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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?

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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.

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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.

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MS. CHAPLIN: Okay. Thank you very much.

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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?

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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.

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MR. SOMMERVILLE: And how would the cost -- how should the cost be shared by the various musicians in that case?

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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.

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MR. SOMMERVILLE: And there's a highly reliable revenue stream.

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DR. MITCHELL: Right.

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MR. SOMMERVILLE: Derived from the taxi.

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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.

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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?

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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?

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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.

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MR. SOMMERVILLE: And if there is no open market, then that opportunity isn't there either, is it?

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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.

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MR. SOMMERVILLE: Thank you.

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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?

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DR. MITCHELL: Certainly, on the numbers that have been used in the exercise as presented here, that would be correct.

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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.

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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?

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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.

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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.

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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.

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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?

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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.

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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?

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DR. MITCHELL: Split the common pipe 50/50, yes.

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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.

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And then you say, at the bottom of page 24:

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"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."

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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.

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DR. MITCHELL: Mm-hm.

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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?

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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.

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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.

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DR. MITCHELL: That's what I said, yes.

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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 --

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DR. MITCHELL: Correct --

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MR. KAISER: -- and so that's where the 60/40 --

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DR. MITCHELL: Correct, commons plus all the incremental is 60/40,

I'm sorry. The common only would be 50/50.

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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?

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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.

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MR. KAISER: But there would be an effect on both sides?

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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.

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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.

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DR. MITCHELL: Mm-hm.

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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?

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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.

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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.

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DR. MITCHELL: Yes, the benchmark one that we've been talking about here for a while.

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MR. KAISER: So that would be the relevant --

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DR. MITCHELL: Or something similar for the others, that's right.

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MR. KAISER: Thank you. Is there anything further Mr. Lyle?

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MR. LYLE: No, Mr. Chair. Other than to clarify the remainder of the schedule for the hearing.

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MR. RUBY: Mr. Chair, if I may, I did have one question in redirect.

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MR. KAISER: I'm sorry, Mr. Ruby.

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RE-EXAMINATION BY MR. RUBY:

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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?

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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 --

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MR. RUBY: Thank you.

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MR. KAISER: Thank you, Mr. Ruby.

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Mr. Lyle?

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PROCEDURAL MATTERS:

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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.

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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.

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MR. BRETT: Yes, that's right, Mr. Chairman. We can do that at the later date, when we come back.

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MR. KAISER: You want to deal with that later, deal with that when we come back on the --

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MR. RUBY: We're in the Board's hands in that respect.

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MR. KAISER: We'll deal with it on the 8th, then. Thank you very much.

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--- Whereupon the hearing adjourned at 3:25 p.m.