

Volume 2 Transcript - RP-2003-0249.txt

Rep: OEB
Doc: 13BFL
Rev: 0
□

ONTARIO ENERGY BOARD

Volume: 2

27 OCTOBER 2004

BEFORE:

G. KAISER
PRESIDING MEMBER AND VICE
CHAIR

P. SOMMERVILLE
MEMBER

C. CHAPLIN
MEMBER

□

RP-2003-0249

1

2

IN THE MATTER OF a hearing held on wednesday, 27
October 2004, in Toronto, Ontario; IN THE MATTER OF the
Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B);
AND IN THE MATTER OF an Application pursuant to section
74 of the Ontario Energy Board Act, 1998 by the Canadian
Cable Television Association for an Order or Orders to amend
the licences of electricity distributors.

3

RP-2003-0249

27 OCTOBER 2004

HEARING HELD AT TORONTO, ONTARIO

□

APPEARANCES

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

□

TABLE OF CONTENTS

CCTA PANEL 1 - FORD, KRAVTIN, GLIST, ASSHETON-SMITH, O'BRIEN,
ARMSTRONG, GREENHAM: □[25]□

CROSS-EXAMINATION BY MR. RUBY:[33]
CROSS-EXAMINATION BY MR. DINGWALL:[309]
CROSS-EXAMINATION BY MR. LYLE:[555]
QUESTIONS FROM THE BOARD:[685]

PRELIMINARY MATTERS:[820]
CEA PANEL 1 - WIEBE:[829]

EXAMINATION BY MR. RUBY:[831]
CROSS-EXAMINATION BY MR. ENGELHART:[947]
CROSS-EXAMINATION BY MR. DINGWALL:[1124]
CROSS-EXAMINATION BY MR. LYLE:[1170]
QUESTIONS FROM THE BOARD:[1218]

PROCEDURAL MATTERS:[1261]

10

EXHIBITS

11

EXHIBIT NO. E.2.1: CURRICULUM VITAE OF MR. ERNST WIEBE[824]
EXHIBIT NO. E.2.2 DRAWING MADE BY MR. ERNST WIEBE[1266]
EXHIBIT NO. E.2.3 EXCERPT FROM THE RATE HANDBOOK[1267]

12

UNDERTAKINGS

13

UNDERTAKING NO. F.2.1: TO PROVIDE FIGURES FOR TOTAL POLE RENTALS PAID BY ALL CABLE COMPANIES TO LDCS IN 1996[403]
UNDERTAKING NO. F.2.2: TO CALCULATE THE 1996 POLE RENTAL RATE AND ADJUST IT FOR INFLATION TO TODAY'S COST USING AN AGREED INFLATION FACTOR SUCH AS THE CPI[546]
UNDERTAKING NO. F.2.3: TO CALCULATE THE WEIGHTED AVERAGE COST OF CAPITAL USING (A) A DEEMED EQUITY OF 45% AND DEEMED DEBT RATIO OF 55% WITH AN INTEREST RATE OF 7% AND AN ROE OF 9.88%; (B) A DEEMED EQUITY OF 50% AND DEEMED DEBT RATIO OF 50% WITH AN INTEREST RATE OF 7% AND AN ROE OF 9.88%[652]
UNDERTAKING NO. F.2.4: TO PROVIDE A CALCULATION OF THE WEIGHTED AVERAGE OF POLE HEIGHTS BASED ON THE CEA'S RESPONSES TO INTERROGATORIES CONTINUED ON PAGE 1 OF APPENDIX B[673]
UNDERTAKING NO. F.2.5: TO ANSWER IN CONFIDENCE WHETHER

IN

THE ARBITRATION CASE IN MANITOBA BETWEEN MTS ALLSTREAM AND MANITOBA HYDRO, DID MANITOBA HYDRO ARGUE THAT ALTHOUGH CRTC DECISION 99-13 WAS ULTIMATELY DISMISSED BY THE SUPREME COURT OF CANADA ON JURISDICTIONAL GROUNDS, THE RATE-SETTING FORMULA IS SOUND AND IS BEING USED IN OTHER JURISDICTIONS ACROSS CANADA[1112]

14

--- Upon commencing at 12:10 p.m.

15

MR. KAISER: Please be seated. Mr. Ruby, before we proceed, can you tell us how much longer you might be with this panel?

16

Volume 2 Transcript - RP-2003-0249.txt
MR. RUBY: Less than an hour.

MR. KAISER: And then do you have another witness after that?

MR. RUBY: We have the witness for the CCTA. There's just one.

MR. KAISER: That's Mr. Wiebe?

MR. RUBY: Excuse me, CEA.

MR. KAISER: CEA, right.

MR. RUBY: I'm not getting off to a good start.

MR. KAISER: You have a lot of us confused. All right. Please proceed.

MR. RUBY: Thank you.

CCTA PANEL 1 - FORD, KRAVTIN, GLIST,
ASSHETON-SMITH, O'BRIEN, ARMSTRONG,
GREENHAM:

D.FORD; Previously sworn.

P.KRAVTIN; Previously sworn.

P.GLIST; Previously sworn.

L.ASSHETON-SMITH; Previously sworn.

R.O'BRIEN; Previously sworn.

J.ARMSTRONG; Previously sworn.

S.GREENHAM; Previously sworn.

CROSS-EXAMINATION BY MR. RUBY:

MR. RUBY: Mr. Ford, when we broke yesterday we were going through your report, and if I could I'd like to pick up where we left off.

35

MR. FORD: Yes, sir.

36

MR. RUBY: And I think that we'd gotten to the various references, the companies across Canada that are in your report. And in your report, at various points, you refer to the situation in Nova Scotia.

37

MR. FORD: That is correct.

38

MR. RUBY: And, in fact, as I understand it, you were a witness in that proceeding, in the proceeding involving -- the most recent proceeding involving joint-use rates for power pole access in Nova Scotia.

39

MR. FORD: That's right.

40

MR. RUBY: Now, isn't it the case that Nova Scotia Power applied for a tariff for its joint-use poles?

41

MR. FORD: I'm not sure if you're making a distinction. They made an application to the Board for a rate --

42

MR. RUBY: Right.

43

MR. FORD: -- for approval and asking the Board to approve a rate. I'm not sure if it was in the form of a tariff, if you're making a distinction there.

44

MR. RUBY: Fair enough. But it wasn't the cable companies that were seeking the rate from the Board, they didn't apply for it.

45

MR. FORD: That is correct.

46

MR. RUBY: And as I understand it, and you can correct me if I am wrong, that's the way it's been done historically in Nova Scotia. This wasn't the first time.

47

MR. FORD: I'm afraid I cannot comment on that. I have only been involved in the one proceeding in Nova Scotia.

48

MR. RUBY: Again, it's my understanding, and you can confirm it if it's within your knowledge, that this wasn't a case of failed negotiations with the cable companies that led to a

Volume 2 Transcript - RP-2003-0249.txt
proceeding, this was an application by the power company.

49

MR. FORD: I think it's fair to say that the power company wasn't satisfied with the rate that the Board had previously approved, which was the same rate that, essentially, the Board had, to my understanding, adopted, the \$9.60 rate; and that the incentive in going to the Board, because the rates had been regulated for some time, was to achieve a higher rate.

50

MR. RUBY: Maybe we can turn to Alberta, which is another proceeding, joint-use proceeding, that's referred to in your materials; is that right?

51

MR. FORD: That is correct.

52

MR. RUBY: And in that case it was TransAlta, the electricity distributor, or one of the electricity distributors in Alberta, that sought a rate from the Board; isn't that right?

53

MR. FORD: I was not involved in the TransAlta case before the EUB at all. I have relied for my evidence, and you may notice a reference or two in there, according to the decision, because all I have read of the TransAlta case is the decision. And the summary that I have presented to assist the Board and other parties in understanding the various approaches that have been used across Canada and, indeed, before the FCC, is to provide the best summary that I could do, and that was based on the decision.

54

MR. RUBY: Can you turn to page 15 of your report, please.

55

MR. FORD: I have that.

56

MR. RUBY: This is under the section -- if you turn back to the page, EUB, and that deals with the TransAlta case; is that right?

57

MR. FORD: That is correct.

58

MR. RUBY: And you say at the top of the page:

59

"During the four years the EUB's decision on support structure rental charges was pending, TransAlta and the cable companies agreed on a lower rate. TransAlta's local distribution business was also sold to UtiliCorp. During this period, UtiliCorp has continued to honour the negotiated rental charge and forego

the additional revenue it could receive by charging the EUB-approved rental charge."

60

I take it that did not come out of the decision.

61

MR. FORD: No, but I must admit I have not looked at the agreement which contained the negotiated rate, and I do not know whether, in fact, TransAlta or the successor owner of the poles had the right to change the rate. I do not know that.

62

MR. RUBY: But it's your evidence that the rate for TransAlta's poles, and its successor company, is now the rate that the parties agreed upon as opposed to the rate the Board imposed?

63

MR. FORD: At the time I wrote the evidence. I don't know what the situation is today, but as I say, I don't know whether they continued to use the negotiated rate because the agreement required that or whether they elected to do that even though the higher rate could have been imposed. I just do not know the answer to that question.

64

MR. RUBY: Right. But at the time you wrote this report, it was the negotiated rate that was being used?

65

MR. FORD: It was in effect, but as I say, I did not know then, and I do not know today, whether or not the agreement was binding in terms of the price or whether it could have been revised by the successor/owner of the poles to implement the higher rate.

66

MR. RUBY: Could you turn back to page 4, please. In the third paragraph, the last sentence, you say:

67

"In many recent cases, such as the one which is the subject of the CCTA's application, negotiations have proven unsuccessful."

68

Hopefully, you can help us understand this a bit more. When you say, "in many recent cases such as this one," does that mean there are more cases of unsuccessful negotiations than the ones in Ontario?

69

MR. FORD: I was referring primarily to the situation in Ontario, which collectively are the subject of the CCTA's application.

70

MR. RUBY: Okay. So when you say "the many recent cases," those are all the recent cases in Ontario

Volume 2 Transcript - RP-2003-0249.txt
you're referring to.

71
MR. FORD: Primarily. Primarily in Ontario, it is my understanding, yes.

72
MR. RUBY: How many are there outside Ontario? You said primarily, so --

73
MR. FORD: I'm not sure that I could point you to a specific example, and
as I say, my evidence was
directed primarily to Ontario.

74
MS. ASSHETON-SMITH: Perhaps John Armstrong can help you on this
question. He has some
experience in other jurisdictions.

75
MR. RUBY: Well, I'm interested in what Mr. Ford said in his report.

76
MS. ASSHETON-SMITH: We could provide the facts for you on that
answer, if you would like.

77
MR. RUBY: Sure.

78
MR. FORD: I understand, for example, that there is an attempt to
negotiate a rate in New Brunswick,
for example, which is -- that's a little -- that is an update. That is an
ongoing process, for
example, and to my knowledge, that has not been successful. So that would
cover all of
the power poles in New Brunswick.

79
MR. RUBY: Okay.

80
MR. FORD: That would be one example.

81
MR. RUBY: Okay. Mr. Armstrong, do you want to add anything?

82
MR. ARMSTRONG: No. That was the example I was going to put forward.

83
MR. RUBY: Okay. Mr. Ford, you took Ms. Friedman yesterday back to the
settlement agreement in
this matter on the question of pricing above incremental but below
stand-alone costs, that
we're all agreed you have to be in between those two, the price has to be
between those
two boundaries; is that right?

84
MR. FORD: If I refer back, the settlement agreement speaks for itself,
but I believe that that's a
reasonable -- a reasonable summary of words under -- I believe it is
under 3(a).

85
MR. RUBY: Okay. Well, my question is, is it your position that any -- or
I gather it's not your position
that any distributor is charging more than their stand-alone costs.

86
MR. FORD: I don't believe there are any such cases, none that I am aware
of.

87
MR. RUBY: Now, if you can turn to page 21, Mr. Ford, of your report. This
is -- I'm looking at the
third paragraph on the page, and it's under the heading which is on the
previous page,
"Determining the Appropriate Level of Contribution." You have what
strikes me as a bit
of a summary of the principles supporting the methodology you've
proposed.

88
And I don't want to put words in your mouth, but to summarize that paragraph, it
strikes me that the three
principles underlying your approach are competitive equity, appropriate incentives,
and the fact that
power utilities have the benefits of ownership; is that fair?

89
MR. FORD: Well, I think, I think that is a summary at the end. We are, of
course, starting off with a
set of cost-based rates. I mean, the --

90
MR. RUBY: Yes.

91
MR. FORD: -- the primary principle is that they be cost-based.

92
MR. RUBY: Fair enough.

93
MR. FORD: And in terms of -- and in terms of then deciding the
appropriate level, some of the
principles that should be used are fairness, competitive equity, and the
public interest.

94
MR. RUBY: You say "some." Is there somewhere else in your report I should
be looking for the
principles?

95
MR. FORD: No, sir, that's -- I think that's what that -- that is what
that sentence says, and it is what I
said.

96
MR. RUBY: Okay.

97
MR. FORD: Once you have looked at the embedded costs and determined the
costs related to the

the common spaces, then that is an appropriate way to judge the -- to judge the appropriateness of the level of contribution.

98
MR. RUBY: Okay. Can I ask you to turn back a page, to page 20, the very last paragraph, please. In the very first sentence you say:

99
"The use of fully-distributed costing to set prices for non-core services of a utility is not appropriate because such costs are presumably already being recovered in full through the prices charged by the utility for its core services."

100
So, I take it from the use of your word "presumably," that this is an assumption you're making, on your part?

101
MR. FORD: It's an assumption which, I think, is based on my understanding of the methodology of rate of return regulation, which is applied to the utilities.

102
MR. RUBY: Okay. And that is one of the assumptions that underlies your methodology?

103
MR. FORD: I guess it goes to my judgment as to whether or not it is fair.

104
MR. RUBY: All right.

105
MR. FORD: It is looking at a contribution for which the utility really has no costs. It's coming back to the issue of the costs that would be incurred but for the attachment, the use of the space by the cable company. And my assumption is that most of those costs are recovered in that -- in that way.

106
MR. RUBY: And, if you stick with me for a moment, if we change the assumption, so let's assume for the moment together that the Board sets in place pricing so that, through distribution rates, the full cost of the pole is not being collected. Would that change your expert opinion?

107
MR. FORD: No, it wouldn't change my expert opinion, because I do not believe that, if the Board chose not to permit the utilities to recover their costs, that it would -- would affect what I would view as an appropriate method of costing for cable use of the communications space on a pole.

108
MR. RUBY: Okay. One of the other items we mentioned before - and I think
you agreed with me -
was one of the principles -- is the principle that utilities are owners
of these poles, and
cable companies are tenants. Is that right?

109
MR. FORD: That is correct.

110
MR. RUBY: And that was a principle that underlay the CRTC decision, as
well, that you've referred
to in your report?

111
MR. FORD: It's certainly my understanding that that was one of the things
they took into account in
deciding the fairness, appropriateness, and reasonableness of the
decision.

112
MR. RUBY: Will you agree with me that that's a factual issue, that is,
it's an issue of evidence whether
or not there actually is a benefit of ownership to utilities?

113
MR. FORD: Perhaps you could help me with the distinction you're asking me
to make. If it's not
factual or a matter of evidence, what would it be?

114
MR. RUBY: Well, I'm suggesting that it is a matter of evidence. It's not
a matter of surmise or of
opinion or of calculation.

115
MS. ASSHETON-SMITH: Mr. Ruby, I think you're asking Mr. Ford to
make a legal determination
as to the nature of what is required to prove a fact.

116
MR. RUBY: No, I'm just trying to separate his opinion from the facts that
underlie his opinion.

117
Let me ask this a different way. Your opinion that you've provided in your report,
overall, has -- I take it
you'll agree with me it's got two components. It's got some underlying facts and
assumptions, and it's got
the methodology you've built based on those facts and assumptions; is that right?

118
MR. FORD: Some of the facts and assumptions are used to develop the
methodology; others are used
in evaluating the appropriateness.

119
MR. RUBY: Okay. "Ownership versus Tenancy," I think that's one of the
titles in your report.

120
MR. FORD: Correct.

121

MR. RUBY: Is that one of the facts or assumptions?

122

MR. FORD: It is a -- it is a consideration that was taken into account by the CRTC in making its decisions as to the appropriateness of a methodology.

123

MR. RUBY: Let me ask you this way. If it was the case that this Board found that, as a matter of fact, there was no benefit to ownership and no net disadvantage of tenancy, would that affect your conclusions in your report?

124

MR. FORD: That's a very difficult question to answer, and I'm not sure that it is a question that I can answer. I wouldn't purport to know how the Board would make its decision.

125

MR. RUBY: No, I'm not asking you that. I'm asking you to assume, as the Board is being asked to address that question, but I'm asking to you assume, for the purpose of this question, that it finds that, as a matter of fact, there is no benefit of ownership and no disadvantage of tenancy. All I want to know, I'm not asking how much, I just want to know if it changes anything.

126

MR. FORD: You're asking me if the Board believed that, would they view my evidence differently? And it's a question that I cannot answer.

127

MR. RUBY: No, I'm asking you if your opinion would be different.

128

MR. FORD: It is such a hypothetical question that I'm really having difficulty trying to answer it. I really don't know what the answer is. I don't know how the Board would act.

129

MR. RUBY: All right. We'll go on to a bit of a different issue.

130

One of the issues on the issues list is how charges should be applied, and one of the things people have talked about is per user or per attachment, for example.

131

MR. FORD: Correct.

132

MR. RUBY: Which one does your model yield? Or is it something else? I don't want to put words in your mouth.

133

MR. FORD: No, it is -- it yields a rate per user within the communications space. Obviously, it relates only to communications space. I think that almost goes without saying. But, yes, it is per user.

134
MR. RUBY: So I understand this, if one user has two attachments, they pay one charge under your model?

135
MR. FORD: In the very few circumstances where a cable company -- we're only dealing with a cable company user here. In the few circumstances where a cable company user has two attachments, one of which might be a conventional cable, one of which might be an attachment for a subscribe drop, for example, which would be -- doesn't require a full cable attachment, that's one example, there would be one fee payable, yes.

136
MR. RUBY: Mr. Greenham, do you know what overlashing is?

137
MR. GREENHAM: Yes, I do.

138
MR. RUBY: Can you explain it to the Board, please.

139
MR. GREENHAM: Sure. Overlashing is, through an agreement, a support-structure agreement either with Bell Canada or with some of the LDCs, the third party is allowed by the existing facility to overlash to their existing strand. We have an agreement with Bell Canada where we take advantage of that so that it reduces the amount of attachments to the pole specifically, because there's only their strand, their bolt, and then we overlash to their cables that are also on that.

140
The LDCs have also taken advantage of that in several municipalities to overlash to our facilities so that they don't have to incur the make-ready charges or build their own facilities as well.

141
MR. RUBY: So is the idea sort of a bundle of cables together? Physically, I'm talking about.

142
MR. GREENHAM: Physically, it's a bundle of cables that are tied together by the lashing wires.

143
MR. RUBY: And do communications users ever lash together two or more of their own wires?

MR. GREENHAM: Our architecture calls for that.

MR. RUBY: Okay.

MR. GREENHAM: And I'm assuming that Bell Canada does in a lot of cases as well, because they have a copper cable and a fiber cable in a lot of cases.

MR. RUBY: So one user can have two wires on a pole if they're overlashed together?

MR. GREENHAM: Technically, the word "overlash" is an additional cable that's placed after the original cable. In some cases we can lash three cables all at the same time, so there's no, really, technical overlashing going on.

MR. RUBY: I see. But you can have two or more cables owned by the same user, the same company, bundled together?

MR. GREENHAM: Yes.

MR. RUBY: Okay. Staying with you for a minute, Mr. Greenham, just to get some of the technical elements aside so we can discuss this more fully, yesterday we talked about how fibers can have multiple glass strands in them; is that right? This is fiber optic cable I'm talking about.

MR. GREENHAM: Yes, that's typically how fiber optic cables are manufactured.

MR. RUBY: And is it fair to say that sometimes one company or user will own some of the strands in that cable, and sometimes another company will own other strands in the cable?

MR. GREENHAM: Through a swap arrangement, that is possible.

MR. RUBY: I've also heard it called a condominium. Have you heard that term before?

MR. GREENHAM: No, not specifically on that.

MR. RUBY: Okay. Mr. Ford, in the two cases we just discussed, starting with lashing or bundling, under your model, does the user get charged once or twice if it's bundled

two of its
cables together on a pole?

158
MR. FORD: I guess there are a couple of examples -- a couple of possibilities, and let me give you my understanding of how it works. But I certainly would appreciate if our cable industry representatives could correct me if I am wrong. But my understanding is that it is the application for a permit to attach to a pole that generates, eventually, a charge. Any time a cable is placed that is overlashed to an existing, say, approval that's granted to a Bell facility, a permit would be applied for, issued, and that would result in a billing to the cable company for that attachment, even though it is physically attached to probably -- presumably a telephone company's strand.

159
MR. RUBY: That's just a matter of contract, right, or practice?

160
MR. RUBY: I'm just trying to get at your model to start with. We can deal with the practice issues.

161
MR. FORD: So that would essentially, as I said, result in a charge and would therefore be classified as a user. I believe that when one strand is attached which contains two of a cable companies facilities, if there are two cables, that would result in one charge as a single user.

162
Now, I would look to my cable industry colleagues to see if they agree with my understanding, because I will be honest with you, I have never applied for a permit.

163
MR. GREENHAM: The overlash scenarios vary across the province. Some LDCs charge us a full rental for that overlash, others don't charge for it at all, others charge 10 or 25 percent of the pole attachment fee. In Mr. Ford's model, that additional payment would reimburse the utility more if there was two users on that pole, plus an overlash, they would be receiving additional revenues that would be up above the cost of placing that 2 feet.

164
MR. RUBY: Is that right, Mr. Ford? Is that the way your model works?

165
MR. FORD: My model is based on an assumption of two users of the communications space.

166
MR. RUBY: It's a system-wide --

167
MR. FORD: It's a rate that -- that's right. And I'm glad you mentioned
that. Because I was a little
afraid that the record yesterday was confused. We are dealing system-wide
-- we're dealing with system-wide average poles and system-wide average
attachments, and that
is to poles to which cable is attached. But once the rate is struck, then
if it is applied to
three users on a pole, then, if there are -- then if -- well, if there
are three users, if there
are two cable users, two different cable systems, for example, then there
would be the
recovery of two such charges.

168
MR. RUBY: Okay. Let's go back to my original question. Under your model,
you told me that your
model yields price per pole, excuse me, per user, per pole, I take it?

169
MR. FORD: That is correct.

170
MR. RUBY: But if there is a cable company that's overlashed two wires, it
pays once because that's
just one user? Is that right?

171
MR. FORD: Unless a separate permit were required, and I think we heard
Mr. Greenham say that in
some cases that requires a full separate charge under existing contracts
and agreements,
in some cases it is at a lower rate of 25 percent.

172
MR. GREENHAM: In some cases zero. They don't actually count that as
two attachments or two
permits.

173
MR. GLIST: I would add that overlashing is generally regarded as
a useful technology for minimizing
burdens on the poles and advancing the deployment of advanced
technology, it is so
regarded by the FCC. And so it's also treated as not causing costs.

174
MR. RUBY: All right.

175
MR. GREENHAM: It also helps reduce clutter and aerial pollution.
Aerial pollution is when
municipalities get upset because there's so many wires on the pole.
And if you
can combine the locations onto one strand, it doesn't look as
cumbersome to the
homeowner, where all these cables are going in front of their house.
So it's not
just because we're, you know, trying to reduce the amount of costs
and stuff,
we're also trying to keep the municipality and the homeowner happy

with the

look of the pollution of the poles.

176

MR. RUBY: And Mr. Greenham, do electricity distributors in Ontario discourage overloading? They let you do it; right?

177

MR. GREENHAM: They do it themselves.

178

MR. RUBY: Right. And Mr. Armstrong, for Rogers? Electricity distributors don't discourage you from overloading?

179

MR. ARMSTRONG: I agree with Mr. Greenham. The distributors overload themselves.

180

MR. RUBY: That unfortunately doesn't answer my question. That might be the case but -- I take it they don't discourage you from doing it? You're not prohibited from doing it?

181

MR. ARMSTRONG: No, that's correct. And most -- depending on the technical specifications, which, again, I can't speak to, if you meet the technical requirements of the LDC for an overload, you generally can overload.

182

MR. RUBY: Mr. Ford, in your model, does it matter how much space -- I'll be very specific here -- exclusive space a cable company uses on a pole? That is, space that nobody else uses or can use because it's there?

183

MR. FORD: The assumption is made that there are two users of the communications space, and it assumes that each user uses 1 foot, even though, as we discussed yesterday, it may only be a three-inch bracket and a bolt through the pole to support it. So I would think it is almost more by convention, and I think I used that term yesterday, by convention that it is assumed to be 1 foot. The spacing, of course, of the attachments of those brackets is normally 1 foot. And I think that is probably the source of the 1-foot convention, and that's what I have used.

184

MR. RUBY: All right. Ms. Kravtin.

185

MS. KRAVTIN: Yes.

186

MR. RUBY: Yesterday, I believe you told Ms. Friedman that, in preparing

your report with Mr. Glist,
you looked at the way various regulators dealt with power pole cost
allocation; is that
right?

187
MS. KRAVTIN: I'm not sure I used those words. Certainly, both Mr.
Glist and I have been
involved in pole regulation and pole cases for many years. So we are
relying on
our expert knowledge in preparing this report.

188
MR. RUBY: Okay. In preparing this report, I take it you also reviewed the
serious economic literature
that exists with respect to cost allocation; is that right?

189
MS. KRAVTIN: No, I do not believe I testified to that. I've been
involved in this field for, you
know, at least 25 years, so certainly I relied on my expert
knowledge and
experience in the area of pole regulation, as well as my economics
background,
which included, certainly, you know, work in the area of what you're
referring to,
I believe, as serious economic literature, in terms of a theoretical
literature, for
which I studied.

190
MR. RUBY: Okay. And the serious economic literature that we're referring
to, that --

191
MS. KRAVTIN: Do you want to define for me, though, what you're
referring to as "serious?" It's
an interesting word, adjective --

192
MR. RUBY: Well, let's call it as we often --

193
MS. KRAVTIN: -- I may need to object to it, as someone who's
worked in the applied field.

194
MR. RUBY: Sure. Let's start with the standard texts and refereed economic
journals. You agree that
those are -- first of all, you agree that there are standard texts in
economics?

195
MS. KRAVTIN: Certainly. And those would have been works that I
would have studied in the
course of my educational experience and professional experience,
over the years.

196
MR. RUBY: Right. And there are refereed journals as well.

197
MS. KRAVTIN: Certainly refereed journals exist.

198
MR. RUBY: Okay. And I take it you would agree that that, to keep it
simple, body of economic
literature provides that principles of economic efficiency, fairness and
incentives should
be considered with respect to cost allocation?

199
MS. KRAVTIN: Are you referring to a specific piece of work? I
mean, certainly, those are criteria
that are referred to in the literature, as well as -- as the
regulatory body of work
as well, concepts of efficiency and equity.

200
MR. RUBY: All right. As an economist, I take it you'll agree that any
methodology for joint-use cost
allocation must be congruent with generally-accepted economic principles.

201
MS. KRAVTIN: Well, certainly as an economist, I believe economic
principles are important and
should be considered by a regulated body, and certainly I believe
our report
discusses those principles and its application to this issue.

202
MR. RUBY: More than just address, doesn't it? It should be consistent
with those economic
principles, shouldn't it?

203
MS. KRAVTIN: Yes, certainly, and our report goes to that point.

204
MR. RUBY: Right. And is another one of those generally-accepted economic
principles with respect
to cost allocation that common costs should be allocated or should be -
well, allocated's a
good word - as nearly equal as possible?

205
MS. KRAVTIN: No. I would not agree with that in all cases. I think
the generally-accepted
principle is that costs be allocated on a cost-causative basis. And,
clearly, there
are different approaches that can be applied, but the overarching
goal is with the
principle of cost causation. And sometimes, in practice, you do the
best you can
to match the reality with those principles. I don't think that it's
necessarily equal.
It will certainly depend on the circumstances involved.

206
In the regulatory field, and in the legislative world, too, we deal with concepts
such as competitive
neutrality and level playing field, and those sorts of concepts.

207
MR. RUBY: Mr. O'Brien, will you agree with me that not all electricity
ratepayers are cable

208
MR. O'BRIEN: That's correct.

209
MS. KRAVTIN: Yes. I'd actually like to add one point further.

210
In discussing the regulatory field and the legislative history, and where this industry has been at, it's generally in the concept of a monopolist and with the entry of competition. And so the real world has had to deal with those issues of how to take the theory and adapt it to a situation, or apply those aspects of the theory that deal with the transition of monopoly to competition, or the existence of monopolists who control essential facilities that are needed for use in other industries.

211
So, again, not knowing, you know, exactly what book or text you're looking at, it's unclear for me to know if it's dealing with the situation of a monopoly environment.

212
MR. RUBY: I'm --

213
MS. KRAVTIN: Or the use of essential facilities. So we're talking in the abstract. I'm trying to bring it back to this industry, this situation. And I just want to make clear so that the record's clear.

214
MR. RUBY: Well, Ms. Kravtin, I don't want to be unfair to you. I'm just reading from the handbook of game theory that was referred to yesterday.

215
MS. KRAVTIN: But are the -- the article or treatise you're referring to, is it dealing with the situation of monopolist controlling essential facilities?

216
MR. RUBY: I'll tell you what, I have a copy. I'll give you one. I suppose Mr. Lyle can mark this as an exhibit.

217
MR. KAISER: And Mr. Ruby, what is it you're asking this witness to do with this --

218
MR. RUBY: The witness seemed to be concerned that I was looking, excuse me --

219
MR. KAISER: And Mr. Ruby, what is it you're asking the witness to do with this book that you want to give her?

MR. RUBY: Absolutely nothing. She, in my view, asked me what I was reading from, and I don't want to be unfair, and not have her at least have a copy.

221
MR. BRETT: Are you seeking to put this in the record in some way, or are you just giving to her to take home and read?

222
MR. RUBY: Well, I think it should be part of the record. I mean, clearly there's an issue if I'm looking at something that she doesn't have.

223
And I'm quite happy to ask Dr. Mitchell, who's also an economist, to testify about whether this particular book is a standard text in economics.

224
MR. KAISER: To come to Mr. Brett's point, are you suggesting that, if we accept this as an exhibit, that it represents evidence in some sense?

225
MR. RUBY: Well, it would be an authority, certainly, the same way other standard scientific texts often are.

226
MR. KAISER: But you are going to put a question to the witness with respect to some specific passage in this, or not?

227
MR. RUBY: I'm quite happy to do that if that's --

228
MR. KAISER: I don't want you just throwing a book in the record that you got from the Roberts Library yesterday afternoon. I mean, you need to put something to the witness.

229
MR. BRETT: That's my concern, Mr. Chairman. And there's also a sort of informal rule, at least here, that if you're going to put something to the witness and ask them a question about it, whether it's a two-page piece of paper, let alone a book, you should give 24 hours' notice. We should have had this piece of material earlier. So it seems to me what he's really talking about is using it as a tool of cross-examination or, perhaps, a tool of examining his own witness in chief. And I'm more comfortable with that, frankly, than --

230
MR. RUBY: Well, I can do it the other way. I did not intend to put this to the witness. I didn't quote to her provisions. I asked her about general economic principles. If she doesn't want to see it, then I'm quite happy not to give it to her.

231
MR. KAISER: All right. Let's leave it on that basis. You can put
it to your witness in direct.

232
MR. RUBY: Thank you.

233
MR. BRETT: It's an exhibit, though, it's not evidence, I take
it?

234
MR. RUBY: Well, it's not anything at the moment.

235
MR. KAISER: It's not anything at the moment.

236
MR. RUBY: Ms. Kravtin, at page 7 of your report, at line 6, are you with
me?

237
MS. KRAVTIN: Yes.

238
MR. RUBY: "This economic reality is the reason why pole attachments have
generated a rich and
ample history of monopoly abuse."

239
Just focussing for the moment on the phrase, "rich and ample history of monopoly
abuse," and Mr. Glist,
you should feel free to chime in on this one since this is your evidence too, does
that refer to the situation
in the United States?

240
MR. GLIST: The evidence goes back to the original Bell system,
which covered Canada as well.
Citations are provided in there, and I'm sure you've gone to them
and reviewed the
history. There was an effort by the monopoly owners of pole
facilities to leverage their
control into displacing the development of an independent facilities
based cable
television industry. That led to the kind of regulatory regimes that
provide rights of
access to poles and fair and reasonable rates.

241
MR. RUBY: Okay, Mr. Glist, I take it then from your answer that when we
want to find out what "rich
and ample history of monopoly abuse," it's the matters that are detailed
in your report,
that's what you're talking about?

242
MR. GLIST: No, it is not exclusively that. And I think that
reference has been made to correspondence
that's been put into the record indicating that the LDCs who own the
essential facilities
here have said, You may not make further attachments unless you cede

to rates that we unilaterally dictate. And that is the kind of identical behavior that is referred to in the materials in the footnotes. That's an exploitation of monopoly power. It's addressed by regulatory responses.

243
MS. ASSHETON-SMITH: Actually, if I could add to that Mr. Ruby, too. When you asked earlier about the negotiations in other jurisdictions, the reason why those negotiations have gone well, with the exception of Ontario and New Brunswick, is likely the presence of an active regulator in almost all the other jurisdictions in Canada. Ontario, until now, has not had an active regulator. So that could be one reason why those negotiations go so smoothly.

244
MR. RUBY: Okay, Ms. Assheton-Smith. Let's go through that, because that's an important point. Are you saying there's an active regulator in British Columbia that regulates joint use?

245
MS. ASSHETON-SMITH: There's no need to do that because the ownership of the poles is split between Telus and B.C. Hydro, so that the poles themselves are split up so that access can be got to the Telus portion of the pole.

246
MR. RUBY: In Alberta, other than the TransAlta decision, is there any other regulatory decision dealing with joint use?

247
MS. ASSHETON-SMITH: Once the regulator has acted, there is an incentive to the parties to bargain differently because they know if there is a disagreement, it can go back to the regulator.

248
MR. RUBY: Ms. Assheton-Smith, have you reviewed the TransAlta decision?

249
MS. ASSHETON-SMITH: Yes, I have.

250
MR. RUBY: Right. Will you agree with me that TransAlta applied for the rate in Alberta?

251
MS. ASSHETON-SMITH: Yes, they did apply for the rate in Alberta. But that doesn't change the fact that the Alberta Board did look at the decision, set a rate, and that if there are further disagreements or disputes between the

parties, they
concerns.

know that there is an expert tribunal that can address those

252
MR. RUBY: Okay. And Saskatchewan, has there been any regulatory ruling on
joint use?

253
MS. ASSHETON-SMITH: Again, in Saskatchewan, it's a very
different situation with Saskatchewan
Utilities Power. There is, I believe in Saskatchewan, at least a Public
Board that could exercise jurisdiction if it needed to.

254
MR. RUBY: Okay. In Manitoba, has the regulator made a ruling on joint
use?

255
MS. ASSHETON-SMITH: The regulator is actively supervising those
negotiations.

256
MR. RUBY: Okay. My understanding is that's a private arbitration. Do you
know whether that's the
case or not?

257
MS. ASSHETON-SMITH: I'd have to confess I'm not familiar with
the case -- with the Manitoba
Hydro arbitration.

258
MR. RUBY: All right. We know what's going on in Ontario.

259
MS. ASSHETON-SMITH: Yes.

260
MR. RUBY: In Quebec, does the regulator in Quebec regulate joint use?

261
MS. ASSHETON-SMITH: It could.

262
MR. RUBY: Okay. But does it?

263
MS. ASSHETON-SMITH: It hasn't had to yet.

264
MR. RUBY: And I'm quite happy to keep going across the country.

265
MS. ASSHETON-SMITH: And I'm quite happy to have you keep going
across the country. And I
possibility of a think the point is, where both parties know there is the
changes the regulated rate at the end of the day, if there is a dispute, it
provide that behavior of the parties, and when there is no regulator to

Glist has just

backstop authority, it creates the kind of situation that Mr.
been describing.

266
MR. RUBY: Okay. Well, we've certainly got a great deal of evidence on how
things work in other
provinces in this proceeding. So perhaps I'll leave it at that.

267
MR. KAISER: Thank you.

268
MR. RUBY: Unless the Board would like me to finish the country.

269
MR. KAISER: No, I think you've gone far enough across the country
for us.

270
MR. RUBY: Thank you.

271
Mr. Glist, is it fair to say that in the United States, at least in part, all of
the regulators that you've referred
to in your evidence have at the very least considered issues of telecommunications
policy and incenting
the rollout of new technologies?

272
MR. GLIST: All of them.

273
MR. LYLE: Mr. Glist, could you speak a little more clearly?

274
MR. GLIST: Yes. I'm just thinking just for a moment about all of
them. I would say that all of them
have proceeded from the first principles of cost allocation based on
proportionate use.
And many of them, because they have both jurisdiction over electric
utilities and
telecommunications utilities, have looked at policy issues arising
from both camps.

275
The courts have said that anything above incremental cost is just compensation.
They have not looked at
the additional policies.

276
MR. RUBY: All right. Does the State of Michigan have jurisdiction -- let
me go back a minute to
something I'm not clear on. You've referred to a State of Michigan
decision with respect
to joint-use access.

277
MR. GLIST: Yes.

278
MR. RUBY: Was that a regulator or the State itself?

279

MR. GLIST: Both. The situation in Michigan was that the legislature had one statute addressing poles for telecommunications purposes, and they had a Public Service Commission that was charged with supervising just and reasonable rates for poles that did not have telecommunications uses on them. And the statute adopted by the legislature followed the normal process of allocating costs according to proportionate use. The electric utilities went -- in the Public Service Commission, said, You don't have to follow that model here, all you need to do is be just and reasonable. You can follow any other formula.

280

And the Michigan TSC said, wait a minute, these are poles that are interspersed in a single pole line. You know, you might have four owned by telephone, six owned by power. And there is this convergence going on where power companies are getting into communications, becoming telecom providers. New telecom attachments get on these poles. It doesn't make sense to apply a different formula to the solely-owned electric utility pole. And so the Public Service Commission said, We are going to follow that same proportionate-use model, and, in fact, to save transaction costs, because we know that the formula gets you well above incremental costs, we'll set a uniform, State-wide rate.

281

So that's the reason that I cited it in the reply report. I thought it was analogous in many ways to the situation that you all have where the CRTC has said something that's been held to apply to telecom poles, and you have independent jurisdiction to address the other half of the pole line.

282

MR. RUBY: Ms. Assheton-Smith, you'll correct me if I am wrong, but I seem to recall that in the appeal of the CRTC decision about setting joint-use rates for power poles, the CCTA took a similar position to the one Mr. Glist just talked about, that it's a bad idea to have, I think it was called hop-scotch between the poles. That you would have a few power poles, then a few telephone poles, and there shouldn't be a different rate between them. That was a position I think the CCTA took.

283

MS. ASSHETON-SMITH: The argument to the Supreme Court in support of our suggestion that there should be a single regulatory authority over all poles, of course, was rejected by the Supreme Court of Canada. But, yes, that was one of the arguments that was made.

284

285
Mr. Glist, if you can just turn to, I guess it's the bottom of page 14 of your report, over to 15. You're talking about a NARUC report. And over on -- to line 1 of page 15, you refer to the average pole rent in the U.S. being \$4.19 U.S. for telephone and \$5.45 U.S. for electric.

286
Is it your position that anything over these prices is an abuse of market power?

287
MR. GLIST: What I'm citing here is an average. You understand that you might have pole rents at 2.50 and you might have pole rents at 7.50 in those states that do not have a uniform rate across the state. What I'm saying here is that you can get a snapshot of the outcome of proportionate-use pricing by looking at the NARUC study of what are charged in -- across these jurisdictions.

288
MR. RUBY: Yes. And is it your position that there is some maximum dollar rate beyond which the rate becomes abusive, or is an indication of an abuse of market power by the electricity distributor?

289
MR. GLIST: Well, it's my position that I hope I make clear in the reply, that one needs to look practically at the outcome of hypotheses. So, if I read a report that hypothesizes a market in which cable operators can't simply build a parallel plant, and they have equal bargaining power, and therefore they should be charged one-third, one-third, one-third, I can run the math and see that the resulting rates from that hypothesis, which we think is fantasy, but the resulting rates from that hypothesis are far above the rates found just and reasonable under the kind of proportionate-use formula that Mr. Ford is proposing.

290
MR. RUBY: All right.

291
MR. GLIST: So I'm trying to use that as a set of objective empirical data points that can be used to judge the reasonableness of a proposal that says, Go higher.

292
MR. RUBY: Mr. Ford, I'll ask you the same question. Is there some maximum rate at which point it's your view that there's an indication -- or that that constitutes an abuse of market power by the electricity distributor?

293
MR. FORD: I haven't turned my mind to that question before, but off the
Page 27

top of my head, anything
which is significantly above a rate which is derived from the recovery of
incremental costs and a proportionate use-based contribution, anything significantly
above that. But
I'm afraid can I not define "significantly above."

294
MS. KRAVTIN: If I could comment. I mean, certainly the economic
literature does talk in terms
of deviation from incremental costs, in terms of trying to identify
and measure market power. And that's consistent with what Mr. Ford is saying;
that you have your benchmark of incremental costs, and then obviously his
methodology adds a contribution. But, to the extent that you look at how much above
percentage-wise incremental costs that rate is, it starts to give
you an idea. There may not be one magic number, but, obviously, if it's 10 percent
above incremental costs, that's much different than if it's 100 percent or
200 percent.

295
MR. RUBY: All right.

296
MS. ASSHETON-SMITH: Mr. Ruby, just before you finish, could I
just clarify something for the
record on the Supreme Court decision. I just wanted to not
leave the wrong fact on the record, that the Supreme Court didn't
actually address the hop-scotch argument, it was really just addressing the
statutory language of the Telecom Act. I just didn't want to leave the
wrong impression that they addressed that and dismissed it in their
decision.

297
MR. RUBY: I think it's fair to say that it's not addressed in the
decision, but it was one of the
arguments made.

298
MS. ASSHETON-SMITH: But it was not addressed in the decision, I
just wanted to make sure that
was clear.

299
MR. RUBY: Right. Mr. Chair, if I could just have a moment.

300
MR. KAISER: Yes, certainly.

301
MR. RUBY: Thank you.

302
Mr. Ford, a moment ago we were talking about whether particular rates are abusive,
in your view. Is the

Volume 2 Transcript - RP-2003-0249.txt
equal sharing of common costs abusive, in your view?

303
MR. FORD: If that were approved by a regulatory body, then by definition it would not be abusive. I certainly don't think it's appropriate to determine the extent of contributions on that basis. I don't think it -- I don't think it is a reasonable way to do it. Whether that would result in a rate that is significantly above what I have determined, I don't know. So I gave you before an undefined level of significance. And I would -- I would have to --

304
MR. GLIST: I think it could be abusive, and that's one of the reasons it's been so widely rejected by other regulatory tribunals, and they look to proportionate allocation of the booked costs of the essential facility.

305
MR. RUBY: Right. Well, Mr. Chair, I have always been taught that it's a good place to end when the experts don't agree with each other. So those are all my questions. Thank you.

306
MR. KAISER: Thank you.

307
Who is going proceed next? Is that you, Mr. Dingwall?

308
MR. DINGWALL: That's correct, sir.

309
CROSS-EXAMINATION BY MR. DINGWALL:

310
MR. DINGWALL: Good afternoon, panel. My name is Brian Dingwall. I'm counsel to Energy Probe Research Foundation, which is an intervenor in these proceedings, representing end-use customers and with a long history of doing so in front of this body.

311
Where possible, I'd be assisted if the panel took their own initiative to choose who might answer a question. I'll have some specific questions for Mr. Ford later on, but I certainly welcome whatever contributions any individual might be able to make.

312
Firstly, with respect to this application for an interim rate, what is the time period that you believe is appropriate for that rate to apply?

313
MS. ASSHETON-SMITH: If I could just ask for a clarification. Are you talking about the interim relief?

314

MR. DINGWALL: Yes.

315

MS. ASSHETON-SMITH: I believe that Mr. Brett indicated yesterday that we were abandoning the request for interim relief.

316

MR. DINGWALL: With respect to --

317

MS. ASSHETON-SMITH: Sorry. The original idea was that the application for interim relief would apply pending the outcome of the Board's decision on their request for final relief.

318

MR. DINGWALL: So then, with respect to the rate, the rental rate, what time period do you see that rental rate being in effect for?

319

MS. ASSHETON-SMITH: Well, I'll take a stab at this. If anyone else wants to join in afterwards, but I think what we'd anticipated is that it would be a licenced condition that would be applied until a subsequent examination of the data would change the rate, thus it would be a regulated charge, and that it would apply until the Board changes the regulated charge.

320

MR. KAISER: Mr. Dingwall, were you dealing with the retroactivity question?

321

MR. DINGWALL: Not yet, sir. That's next.

322

I understand from discussions yesterday that there are a number of contracts between local distribution companies and cable or other telecommunications carriers that have a clause in them which would enable that agreement to reach back in time and adjust the rental rate with whatever rate might be emerging from these proceedings. Could you give me an indication of what ballpark proportion of the agreements in place contain that retroactive clause?

323

MS. ASSHETON-SMITH: Just give me a moment.

324

I think it's safe to say -- sorry, I think it's safe to say that the large majority of agreements that we have in place are in place because they have a retroactivity clause, and otherwise probably would not be in place.

325

MR. DINGWALL: Now, as I understand it, the last time that there was a global rental agreement in place was 1996; is that correct?

326

MS. ASSHETON-SMITH: That's correct.

327

MR. DINGWALL: So for what time period is there the potential that there could be retroactive adjustments?

328

MS. ASSHETON-SMITH: I believe it's January 1st, 1997.

329

MR. DINGWALL: And this again would be for the bulk of the rental agreements out there?

330

MS. ASSHETON-SMITH: That's correct.

331

MR. ARMSTRONG: If I could just clarify one comment about that. I can speak for Rogers' standpoint.

Some of our agreements go back to January 1, 1997, but others we didn't enter into interim agreements until later. So it's a little bit all over the map, but the majority of them would be January 1, 1997.

332

MR. DINGWALL: I'm trying to get an understanding of what the ballpark dollar figure that this Board is going to be dealing with is likely to be. Is there any information available as to what total pole rentals on an annual basis might have been in terms of a dollar figure for 1996?

333

MS. ASSHETON-SMITH: At what rate?

334

MR. DINGWALL: At the rate that would then have been in place.

335

MS. ASSHETON-SMITH: I don't have access to that right now. Perhaps we could give you an undertaking to see if we can find that information.

336

MR. DINGWALL: What I'm looking for is a best estimate. So I'm happy to have the undertaking in that fashion. I wonder if we can reflect that on the record.

337

MR. LYLE: We'll make that Undertaking F.2.1.

338

MR. BRETT: Just so I'm clear, Mr. Dingwall, it's the actual revenues to -- paid by each of the cable companies for these rates in that year or is it the revenues by LDC,

or is it the totals, I

guess, you're looking for?

339

MR. DINGWALL: It's the total, Mr. Brett.

340

MR. BRETT: Okay.

341

MS. ASSHETON-SMITH: The total charges of all the cable companies to LDCs?

342

MR. DINGWALL: From rental rates.

343

MS. ASSHETON-SMITH: For pole charges?

344

MR. DINGWALL: That's right.

345

MS. ASSHETON-SMITH: Okay.

346

MR. KAISER: But Mr. Dingwall, isn't the question really that you're looking for is the amount of the refund, if any, that would come into place? If the rates get adjusted retroactively, let's suppose they get reduced, there would be a refund; correct?

347

MR. DINGWALL: From what I understand --

348

MR. KAISER: Isn't that the amount that you're looking for?

349

MR. DINGWALL: Well, eventually we'll get there. What I'm looking for is the starting point; to see, first of all, how much money is at play each year. 1996 was the starting point from when there was last an agreement.

350

MR. KAISER: So, if they tell you how much they're paying, these LDCs, do you need it for the entire period to go back to January 1st of '97 or do you need it for just one year?

351

MR. DINGWALL: Well, I think what would be the best information, and I'm not sure what's remaining when we separate regulatory treatment. That's certainly something I intend to canvass in my questions, is what the amount might be for the periods 1997-1999, begin PBR, and then what happens from 1999 to 2005. There are two time periods from the point of view of cost allocation and regulatory treatment.

352
MR. KAISER: Mr. Brett, is that something that you can calculate?

353
MR. BRETT: I thought initially, actually, Mr. Dingwall was asking for what they paid in '96.

354
MS. ASSHETON-SMITH: That's what my understanding -- I think that might be the only information that we would be able to actually gather. It was the only -- the last time we had, essentially, a uniform rate across the province.

355
MR. DINGWALL: To delve into that a little bit further, if you don't mind, Mr. Kaiser.

356
MR. KAISER: Yes.

357
MR. DINGWALL: I understood from the evidence yesterday that after the previous agreement expired, that there became some inconsistency in the rates applied by LDCs; is that correct?

358
MS. ASSHETON-SMITH: Yes. Almost immediately, I believe, they were all over the map.

359
MR. DINGWALL: And in addition to that, there are also some situations where cable companies have not paid the charges, pending resolution of the dispute?

360
MS. ASSHETON-SMITH: That is my understanding in some cases, although not the majority.

361
MR. GREENHAM: For clarity, in locations where -- for example, Oakville Hydro, we have not received a permit since '96, and we have not made payment since '96. So it's -- we're both striving to -- well, we're both waiting for a decision on this to be able to conclude this.

362
MR. KAISER: Does that mean there have been no attachments since 1996?

363
MR. GREENHAM: We have made no new attachments since '96.

364
MS. ASSHETON-SMITH: Yeah, and perhaps this is a question more for the LDC panel, but it's not my understanding that the pole rental charges, even on the interim rates,

know
refund or what
issue, I guess,

are included in the LDC revenue requirement now. So I don't
whether there would, in fact, be an impact on the kind of
the impact of that refund would be, if any. And that's an
that would have to go to the LDC panel.

365

MR. DINGWALL: Thank you for that.

366

What I'm wondering is, where would be the best place to get the information as to
what the LDCs were
charging post 1997? Was that ever created on a central basis?

367

MS. ASSHETON-SMITH: Certainly not at the CCTA level. We only
have current rates aggregated
-- on an aggregate basis for our members. We do not have that
information for the periods 1997 to 2004.

368

MR. GREENHAM: In Cogeco's case, every file has what was paid, what
was requested on an
individual -- like, I have 45 different hydro utilities that I deal
with, and I have a
file on each one, and it's tracking what was requested, what was
paid, and what's
outstanding, based on where they want the rate or we want the rate.
And each
one is not 100 percent tracked as efficiently as it should be,
because these files
have been transferred from one owner to another, and now are finally
on my
desk.

369

So there's inaccurate or not enough information, we would have to actually go with
the LDC to go
through each year to come to a determination after a final rate is derived, to come
up with what's owing
and what's not owing and what's due and has a credit.

370

MR. KAISER: Let me understand that. You must know how much you're
paying the LDC's annually
now.

371

MR. GREENHAM: Yes.

372

MR. KAISER: That is to say, your company.

373

MR. GREENHAM: Yes.

374

MR. KAISER: Although I guess the discrepancy is, you may not be
paying all of the bills. Is that the
problem?

375
MR. GREENHAM: You're right. There are some bills that are not being paid.

376
MR. KAISER: But at least if Mr. Dingwall wanted to get a measure of, I'm going to call it, the amount of the refund, or potential refund, you could calculate it for Rogers and you could calculate it for Cogeco.

377
MR. GREENHAM: On an individual, LDC basis.

378
MR. KAISER: Well, can't you do it on an aggregate basis? Let's suppose you're paying X dollars a year now, Cogeco is.

379
MR. GREENHAM: An average over the 45 --

380
MR. KAISER: And let's suppose he asked you -- I don't know what his question is going to be, I probably shouldn't be asking you this, what would you pay if Mr. Ford's rate is adopted? There would be a difference; right?

381
MR. GREENHAM: Yes.

382
MR. KAISER: Likely a reduction.

383
MR. GREENHAM: Not necessarily. I have some utilities, very small utilities, in the northeast of Ontario that are still charging the \$10 rate, which was from '96. I also have utilities that are charging \$40.92, and that have paid. It is all over the map, and like, it would be very difficult on a per-pole basis to come up with what that average rate is, because in the smaller systems I'm on 300 poles, and in the larger systems I'm on 25,000 poles. So to come up with an average rate for each one of those and try and come up with what that cost is, that's very difficult. It takes some math.

384
MR. DINGWALL: Mr. Greenham, does your company accumulate records of what is paid annually as well as what has been billed and not paid?

385
MR. GREENHAM: I'm assuming they do. That would be done in the Montreal office, and I'm not privy or I don't track those things.

386

Volume 2 Transcript - RP-2003-0249.txt
MR. DINGWALL: How about Mr. Armstrong?

387
MR. ARMSTRONG: I believe that our national facilities coordinator
has some figures to that effect,
that we know -- I think -- obviously we know how much we paid. How
much has
been billed and not paid, I'm not sure we have a handle on that.

388
MR. GREENHAM: If I could add. I know that in our annual report we
always identify that risk, and
it's in our annual report as to what risk is there with not paying
full rates on the --
with the LDCs that are being requested. So --

389
MR. KAISER: Mr. Armstrong, are you paying all your bills, or not?

390
MR. ARMSTRONG: Yes, Mr. Chairman. We pay our bills. There are
certain bills that -- for example,
where we don't
neighbouring
there are bills that we would receive that have a rate in it of \$45
have an agreement. We'll pay it at the highest rate that we pay to a
distributor, and try to seek an agreement in that case.

391
MR. KAISER: Now, Mr. Dingwall, I know -- and I take it that
you're trying to get some idea of what the
potential payment by LDCs might be under this retroactivity term
they have in their
agreements. But it looks like it's going to be a lot of work. How
important is this for you?

392
MR. DINGWALL: I think, frankly sir, that for the purposes of
understanding the ballpark, the '96
figure's going to give a good indication. The balance of the
accounting exercise
is really going flow from the decision in this case, and isn't
something I think it
would be fair to put the witnesses to, on this side. I'm going to
have similar
questions of the LDC representatives in order to understand what
information
might be available from that side, as well.

393
MR. KAISER: Would it be easier for you if you asked your
questions up here instead of talking into the
back of their heads?

394
MR. DINGWALL: It would be, sir. I think I could move up.

395
MR. KAISER: Mr. Lyle, do you think you could accommodate Mr.
Dingwall?

396
MR. LYLE: Certainly, sir.

397
MR. DINGWALL: Do you want to do that on a break, sir, or would you
be happy with the interruption?

398
MR. KAISER: No, do it now. It wouldn't take long. While you're
moving, do I understand that you would be satisfied with the '96 data?

399
MR. DINGWALL: That's correct.

400
MR. KAISER: Is that possible, gentlemen?

401
MS. ASSHETON-SMITH: We may be able to get a rough estimate. One
of the problems we may have is with some of our very small systems who may not have
that information, but, certainly, for the vast, vast majority of our
large members, we would be able to get a number.

402
MR. KAISER: So we'll do it on your best efforts, an estimate.

403
UNDERTAKING NO. F.2.1: TO PROVIDE FIGURES FOR TOTAL POLE
RENTALS PAID BY ALL CABLE COMPANIES TO LDCs IN 1996

404
MS. ASSHETON-SMITH: Yes, sir.

405
MR. KAISER: Don't run out and hire a consultant or anything.

406
MS. ASSHETON-SMITH: Thank you.

407
MR. DINGWALL: With respect to the negotiations that have taken
place over the years with the local distribution companies, have the cable companies been provided
by each LDC in the course of those negotiations with what -- with
documentation or with information that would lead you to have an understanding and backup
to support what the suggested changes in costs might be?

408
MS. ASSHETON-SMITH: Perhaps Mr. O'Brien and Mr. Armstrong and
Mr. Greenham could address that.

409
MR. ARMSTRONG: The only information that I've ever been offered by
anyone is the information from the Milton study that resulted in a rate of \$40.92, and which

was at the nub

costing information of the dispute since '97. Other than that, I've not received any from any LDC.

410

MR. GREENHAM: Grimsby Hydro had their own take on how to come up with a rate. And their rate that they came up with was \$30 a pole. However, they wouldn't give us a retroactive clause in the agreement, and I can't recall how they came up with that. Mr. Weber's going to be on a panel tomorrow, or on his own tomorrow. Perhaps you could ask him how he came up with that \$30 rate.

411

MR. DINGWALL: So what I'm hearing is that only two -- there are only two instances where LDCs made specific information available with respect to what the actual costs supporting their suggested rates might be.

412

MR. O'BRIEN: Certainly, from the smaller system perspective, there's been no information come forth.

413

MR. ARMSTRONG: I don't want to misspeak. There wasn't just one time that an LDC had said to me, we're adopting the Milton information. That might have -- I mean, back in 1997, when I wasn't in this position, didn't work for Rogers, that may have happened more often than just once. And since I've taken this position five years ago, I can think of -- on two occasions when an LDC has said to me, we'll adopt the Milton information.

414

And I also want to just clarify, Mr. Dingwall, that often what I've been given when I've asked for additional information about how a number's derived, the answer becomes, we just took our last rate and added to it additional capital costs and incremental costs, and we're at a rate of X now.

415

MR. DINGWALL: I understand that, except for some isolated extreme circumstances, you are continuing to operate your businesses and gain new attachments to poles; is that correct?

416

MR. ARMSTRONG: From Rogers' perspective, I would say that it's -- yeah, you know, yes, we continue to operate our business. We continue to serve our customers. We have some real challenges in certain areas with certain LDCs. We continue to speak on an ongoing basis with those LDCs to try and work through them,

but these are
haven't come
issues that have been going on for a number of years, and we still
to any resolution to them.

417

MR. DINGWALL: I'd like to move to page 26 of Mr. Ford's document. I
see that line E on that
document contains a depreciation expense. What's the presumption
around the
depreciation rate for that expense, Mr. Ford?

418

MR. FORD: That was not provided in the Milton costing data, but it
appears as though it -- because
the embedded cost of the pole, the original historic costs of their
poles, on average, was
not provided. It is, however, consistent, I believe, with something in
the range of
probably 3.5 to 4 percent, and I understand that 4 percent, which is the
straight-line
depreciation over 25 years, is pretty standard. But the number of \$31.11
was a number
that was provided in that costing information as depreciation, and I
accepted that for
purposes of putting together a rate that I could recommend to the Board.

419

MR. DINGWALL: I believe the accounting procedures handbook carries
with it a 25-year
straight-line rate for poles. Is that -- you mentioned that the
rate, or the rate that
is assumed within your calculations, is somewhere between 3.5 and 4?

420

MR. FORD: No. I'm sorry. I adopted the \$31.11 rate. I cannot tell you the
origin, but I can tell you
that it appears to be consistent with a rate that is probably somewhere
in the range of 3.5
to 4 percent. And if somebody from Milton were to tell me -- or ask me if
I would
disagree that it could be 4 percent, I would have to say it could well
have been 4 percent.

421

You know, I think that was probably standard practice at the time that the data was
put together, but I do
not have the embedded costs. That data was not -- or at least I don't believe that
data was provided. I
could not find it when I looked through, and therefore I could not determine the
actual percentage.

422

MR. DINGWALL: Now, with respect to line G in your calculation, the
capital carrying cost, is this
intended on reflecting the actual utility debt rates, or really a
rate of return on the
asset?

423

MR. FORD: I'm sorry, are you asking me if it reflects one or the other?

424

425
MR. FORD: I believe it reflects both. I mean, that's what I intended to determine, was both the embedded cost of debt and the pre-tax or, perhaps I should use the term "pre-pill" cost of equity. And I think I ran through that in some detail on page 25 of my evidence, which shows that I used the deemed capital structure, the allowed return on equity, took into account the pill, or payments in lieu of income taxes which would apply, and worked out a -- oh, sorry, the embedded cost of debt, the utility's embedded cost of debt, and arrived at a pre-tax cost of capital, which was then applied to the net-embedded cost of the pole to arrive at the capital carrying cost.

426
MR. DINGWALL: So you used the deemed debt rate as the basis for your calculation?

427
MR. FORD: Can I just -- I used an interest rate of 6.9 percent. I believe that is the deemed debt rate.

428
MR. DINGWALL: Okay. With respect to the determination of administrative costs and loss-in-productivity costs, are there accepted definitions of these terms used in the calculation of these charges in other jurisdictions?

429
MR. FORD: I'm not sure that I would go as far as saying an accepted definition. I think there's a general understanding that administration costs are those costs of the utility that are incurred for the administration of pole attachments, pole-usage agreements, and the billing and collection associated. And it is on an incremental basis. It is the cost that they would not -- the utility would not incur but for the presence of the user in the communications space.

430
Similarly the loss in productivity is intended to reimburse the utility for the costs that it would not incur but for the placement of those cables in the communications space, and are intended to cover the extra costs incurred by the utility for its work crews, having -- taking extra time to do their work, to do their maintenance work, to do their construction work on the poles, as a result of the presence of the cable company's cables in the communications space.

431
Now, the CRTC has made reference to certain descriptions such as I've just given you in their decisions, and the decisions themselves are footnoted in my evidence. And I could, if it would be of assistance to

you, make those available to you or read them into the record. I'm not sure how deep you want to go with that question. But I would say there is not a methodology that has been applied, that there is not a formula, for example, for determining that.

432

MR. DINGWALL: Now, your loss-of-productivity calculation, for example, is based on a 1991 study. Are you aware of any other studies that have come out since that time that might update that number?

433

MR. FORD: There were some numbers that were put forward by Bell Canada and B.C. Tel at various times in proceedings before the CRTC. However, I don't believe those numbers are particularly relevant, because what you're talking about is the productivity impact on a utility or on a service provider that's operating in the same physical space, very close proximity. So I don't believe that that would have much relevance. And my belief is that those numbers are probably in 1992 or 1993 data, because the decision that looked at that was last rendered in 1995.

434

MR. DINGWALL: But in the case of administrative costs it seems that the information is much more current, being 1999.

435

MR. FORD: That is what was -- that was the CRTC's estimate. I would have -- I'll be a little bit cautious here, but I'm not sure that that was supported by any data put forward by the participants in the case. I believe the loss in productivity number was -- and, in fact, has been made reference to by one of the filings by the LDCs here. I did take the opportunity to look back at that information, and it was actually based on what were only termed "estimates" of three utilities. One of them had 2,000 poles. The others had 37,000 and whatnot, and the highest of all was from the company that had 2,000 poles. It was \$4 per pole, per year, and it was a simple numeric average of those three.

436

So the number itself is, I would said, not totally justified. There is not a good basis for it. It was a 1991 figure put forward by the MEA in a one-page memo. They brought the number forward to, I believe it was 1997, and then I took that number and again brought it forward. However, since it was per pole, I divided it between two users. So that's how I arrived at the number of \$1.92.

437

MR. DINGWALL: Okay. Moving back to poles for a minute, we discussed what the depreciation assumptions usually are. What is the useful life of a pole,

generally, likely to be?

438

MR. FORD: That is not something that's within my area of expertise. I would certainly -- I'm not sure whether we might not have a better person to speak to that, perhaps on another panel.

But I will check with our industry experts and see if they have any information at all as to what the useful life of a pole might be.

439

MR. GLIST: At least for the U.S. electric utilities that I've studied in detail on this question, the useful life, that is, years in actual service extend beyond the depreciation schedule, in actual practice. So we actually have some pole owners that run negative balances in their net-pole account.

440

MR. DINGWALL: And looking at a net-embedded cost per pole on a utility-by-utility basis, I take it the numbers would be significantly different from utility to utility?

441

MR. FORD: Well, as I indicated when I was replying to a question yesterday from counsel for EDA, I would like to have been able to know that information. However, I was somewhat encouraged that, you know, based on data that was provided in respect of Hamilton Hydro, that the net-embedded cost per pole for a utility, which is about four times the size of Milton, appeared to have a net-embedded cost per pole which was almost identical. Now, I would suspect that there would be a variance. I was quite surprised at the similarity. So, while I would have expected probably a little wider variation, that would indicate to me that, perhaps, there is not such a wide variation.

442

MR. DINGWALL: What are the elements that could drive the variation in that number?

443

MR. FORD: One would be the original cost of the pole, or the original cost at the time they were installed. So if the poles on average are older poles, when the installed cost was lower, that would be one factor. A second factor would be the age, sorry. The age of the poles themselves, on which, of course, the accumulated depreciation would be greater. So when you're talking net embedded, it is the original cost less the accumulated depreciation. So the number of years over which depreciation has been accumulated would be one factor. Now, we're talking, of course, the average across the entire pole population. So we're talking the average age of the pole, and the longer

ago they were
installed, the lower would be that number.

444
MR. DINGWALL: So if you're looking at an individual LDC that had a
high proportion of new
poles, would it then have a higher net-embedded pole cost?

445
MR. FORD: I would expect that it would, all other things being the same;
yes.

446
MR. DINGWALL: So, then, in order to gain representative sampling to
determine an appropriate
charge, what would that sampling look like?

447
MR. FORD: I would like to have had a sample of all of the companies. I
would have liked to have had
data from all of the companies. And I think it was demonstrated that, in
the methodology
put forward by Hamilton Hydro, that it can be, in part, derived from the
standard uniform
system of accounts data. At the motions day, it was not ordered that it
put forward the
accumulated depreciation account, but rather the annual depreciation
amount. So we
could not actually calculate for any of the companies that did provide
some data what
that number would be. I'm not -- I believe it would not be
methodologically difficult to
determine that.

448
MR. DINGWALL: So the piece of information that's missing is the
accumulated depreciation for the
utilities who provided responses?

449
MR. FORD: That is, that is the major thing. The only other difficulty is,
as I peruse the data, and
you'll understand that I like you got it middle to late last week, I
haven't had time to go
through it in detail. It was obvious to me there were some outliers. Some
of the numbers
showed zero balance in the pole and fixtures account. So there will be
some outliers that
probably could not be taken into account in developing a representative
number. But I
would think that for those who have applied the uniform system of
accounts properly,
that those two numbers would be -- would go a long way towards
determining it.

450
There is also a standard, I don't want to use the term generally-accepted
methodology, but certainly I
have seen it suggested in a number of places, including the Hamilton Hydro, and I
believe appendix E to
the in-process draft MEARIE agreement, as well as before the FCC, that for power
poles, 85 percent of
the assets in that account are determined to be power-specific. I'm talking the

1830 asset account. So that
roughly 85 percent of the amount on a representative basis is the bare pole, which
is the relevant
calculation for determining both the embedded and net-embedded costs for use in a
calculation such as I
presented here.

451
MR. DINGWALL: In the EDA's submission at page 14, they identify a
number of other cost
categories that they suggest should be looked at in order to gain a
full
understanding of the costs and the burdens on the system.

452
MR. FORD: Could you just pause for a second while I pull out the data --
the application -- or the
evidence?

453
MR. DINGWALL: Certainly.

454
MR. FORD: I believe I have the evidence. And you asked me to turn to
page?

455
MR. DINGWALL: 14.

456
MR. FORD: Page 14, and paragraph?

457
MR. DINGWALL: Well -- I'm going to open this question up to the
panel in general. There are three
cost considerations which I'll summarize briefly. One is the
relative costs that
would be incurred by each user on a stand-alone basis, and I believe
we had a
significant number of questions about the ten poles and I won't go
back there.
Then the question of the relative revenues of users and the question
of rate
impacts on customers of each user. Are cable companies in Ontario
currently
subject to rate regulation?

458
MS. ASSHETON-SMITH: No, they are not.

459
MR. DINGWALL: From the period 1997 to the current date, were they
subject?

460
MS. ASSHETON-SMITH: It varies. The CRTC introduced an approach
for rate deregulation of
large cable companies. I should preface this by saying that
only the basic
tier of cable services has ever been rate regulated. So
discretionary
services such as pay-per-view, some of the specialties,
pay-on-demand,

smallest

those have never been rate regulated, nor have many of the systems been rate regulated for many years.

461

So with respect to the large systems, which are 6,000 subscribers and above, in 1998 the Commission created a formula or an approach by which cable companies could seek to be rate deregulated. And since 2001, I believe was the first application, subject to check, was the first application by a cable company for rate deregulation, having lost a market share to satellite companies, which then allowed it to seek rate deregulation. As of this time, I believe that all cable companies in Ontario are rate deregulated.

462

MR. DINGWALL: Do cable companies' infrastructure extend beyond power poles? Are there other forms of attachment or transfer -- laying of cable?

463

MS. ASSHETON-SMITH: The plant definitely expands beyond the cable wire itself, and perhaps I can ask Steve or John to comment on this.

464

MR. ARMSTRONG: If I understand your question correctly, you are asking if we attach our equipment to poles other than those owned by hydro distributors?

465

MR. DINGWALL: Or do you use other methods to get cable into the marketplace, apart from poles?

466

MR. ARMSTRONG: Poles, periodically we use conduit, periodically we directly bury it into the ground.

467

MR. GREENHAM: We extend our plant beyond just using hydro poles. We use Bell poles, we go underground, we don't service more customers than the hydro utility does. They're also feeding those customers in other methods as well. In a new subdivision, for instance, municipalities don't like to see poles in Ontario, and everybody goes underground.

468

MS. ASSHETON-SMITH: I think it's safe to say, though, that the vast majority of our customers in Ontario are served through power poles, power pole distribution of our plant. Is that fair to say?

469

MR. ARMSTRONG: At some point.

470

MS. ASSHETON-SMITH: At some point in the network.

471
MR. DINGWALL: Do you separate out the revenues? Is it possible to
determine what revenues are
with respect received by cable or other telecommunications carriers specifically
to the power pole infrastructure?

472
MS. ASSHETON-SMITH: No.

473
MR. DINGWALL: So, in terms of the suggestion that we look at the
relative revenues of users of
from power power poles, is there a way to determine what revenue you derive
poles and attachments?

474
MS. ASSHETON-SMITH: We don't derive any revenue from power pole
attachments. If you're
consideration, asking whether the revenues of the users are a relevant
an you know, I think we've gone on the record stating that that's
although I'd ask inappropriate and I believe unprecedented consideration,
Mr. Glist to comment on it as well.

475
MR. GLIST: I think you're right. In the end, you're looking at
the costs, and the utility pole, it's an
input, it's not a revenue source to a cable company.

476
MR. DINGWALL: Mr. Glist, in your experience in the United States,
is the relative revenue of users
pole used in any jurisdiction to examine the appropriate costs of power
attachments?

477
MR. GLIST: The only time that I can ever remember it coming up
was in an interrogatory in the
hour impact on Massachusetts DTE, where they asked me to calculate the kilowatt
relief being electric utility customers and the impact on cable customers of the
order. That is considered, so I submitted that analysis. It never showed up in the
the only
time that I can recall it coming up.

478
MR. DINGWALL: This is an awkward question. If the Board produces
its rate as a licence
aggregate or condition, and that rate is substantially lower than either the
customers? proportionate rates currently being paid, what's the impact on your

479
MS. ASSHETON-SMITH: I'm not sure there would be any immediate
impact on our customers, but

480
MR. ARMSTRONG: I'm not sure there would be any immediate impact on
our customers whether the
Board set -- I mean, we're in a competitive environment right now
providing services in --

481
[Court reporter coughing]

482
MR. KAISER: Possibly, Mr. Lyle, we could take the afternoon break
at this time.

483
MR. LYLE: Certainly, Mr. Chair.

484
MR. KAISER: Is that satisfactory, Mr. Dingwall?

485
MR. DINGWALL: Certainly. I have only two short areas to cover --

486
MR. KAISER: I think that the reporter needs a break. Thank you.

487
--- Recess taken at 1:50 p.m.

488
--- On resuming at 2:14 p.m.

489
MR. KAISER: Please be seated.

490
Mr. Dingwall?

491
MR. DINGWALL: Thank you, sir.

492
I believe, before we took the break, there was a question that I don't believe the
panel may have had a full
chance to answer, which was, in the event that -- as a result of the Board setting
a rate as part of a licence
condition, there are significant funds flowing from the electricity LDCs back to
the cable companies,
what would happen to the customers of those companies?

493
MS. ASSHETON-SMITH: I think we said that there would be no
immediate impact, but that over
time the impact could be beneficial to cable customers. I'm
going to just
hand that to John Armstrong to follow up on.

494
MR. ARMSTRONG: Yes. It reflects -- I think the impacts reflect the
competitive environment that we
deal in with the satellite distributors. And it's such a competitive
market that our
regulator has recognized that through the rate deregulation process.

So we take our cues as a business operator, what to do with capital, from that competitive environment. And we would invest any, you know, capital accordingly, back in the business.

495
MS. ASSHETON-SMITH: Including, presumably, rolling out, perhaps, new and advanced services to customers and in areas where we haven't previously been able to serve.

496
I think the biggest benefit of having -- perhaps not the biggest benefit, one of the most significant benefits of having that charge established would be that we could get on with our business in many parts of the province where we have, perhaps, been frustrated in our attempts to do so.

497
MR. DINGWALL: What we're talking about in context of this hearing is a rate which would apply until it would be more possible to create a better rate.

498
MS. ASSHETON-SMITH: Mm-hm.

499
MR. DINGWALL: Is it the CCTA's view that the formula propounded by Mr. Ford should be the basis for a calculation of a future rate, in addition to being the basis for calculation of a rate that you're proposing today?

500
MS. ASSHETON-SMITH: I don't think we can speak to what would be appropriate based on new evidence that might come before the Board in the future. I think that what we're suggesting is that, on the basis of the record of this proceeding and the evidence that is in front of the Board, that Mr. Ford's proposed methodology would result in a fair and appropriate rate. I wouldn't want to speculate on what the Board might want to do in a different proceeding in the future. Although I would presume that, if we were faced with the same evidence, we would put forward the same, same approach. And perhaps --

501
MS. KRAVTIN: I was just going to add that the type of formula methodology presented by Mr. Ford is similar to the types of formulas that have been used for many, many years successfully in the United States. And part of their benefit is that it sets in place a formula that can be relied on by both the owner and the

attacher to know
reasonable what those rates would be and that they will be set in a fair and
manner, and one consistent with economic principles.

502
MS. ASSHETON-SMITH: I think it's a methodology that has stood
the test of time, and there's no
reason to suspect that it would not continue to stand the test
of time.

503
MR. DINGWALL: What I'm seeing, in looking at the component costs
that are plugged into the
formula, are matters that may or may not be updated in the next
one-year,
two-year or three-year period, and that's why I'm kind of wondering
what the
intended shelf life of the formula is. Is it the CCTA's intention
that this formula
become the basis for these calculations after the initial period?

504
MS. ASSHETON-SMITH: After which initial period? I'm sorry?

505
MR. DINGWALL: The period that the Board determines that there will
be a licence condition. I'm
presuming that in the relief that you'll be suggesting at the end of
the day, you'll
be suggesting that it apply either for a specific time period or
until a conditional
future event.

506
MS. ASSHETON-SMITH: I think until there is cost data in
evidence to suggest that a different
charge is appropriate, we would suggest that the charge should
continue
to apply. And it's one of the reasons why we've suggested a
uniform
charge, because, in the absence of the detailed costing data,
it would be
the most administratively simple and most efficient way to
administer
and implement the charge.

507
MR. DINGWALL: Now, this question is for Mr. Glist and Ms. Kravtin.

508
In looking at page 26 of Mr. Ford's evidence, it looks like a number of the
elements from which he's
derived the proposed costs and proposed rental charge are somewhat historical in
nature. In your
experience in the setting of rental charges in the various jurisdictions in which
you've appeared, have
these charges been set based on historical adjusted figures, or based on actual
current costs?

509
MR. GLIST: The conventional approach - I mean, this is used
across a lot of regulatory tribunals - is if

you have it available, you use publicly-available input data showing, for example, the current net-embedded book costs of a bare pole as your base for calculation, and you would take the publicly-reported expense figure for maintenance, as an example.

510
So it's the embedded historical cost, as current as you can bring it, if it's available. There are occasions where it's not available. And then the regulator will use the best available evidence, which is sometimes borrowed from other utilities operating in the region, in order to develop a rate that is -- it ends up being above incremental costs, but it's deemed just and reasonable. Because you don't always have perfect information.

511
Am I addressing your question?

512
MR. DINGWALL: Yes, I believe so.

513
MR. GLIST: Okay.

514
MR. DINGWALL: It sounds like, then, you're saying that, where they've got available information, they use it, and where they don't, they extrapolate it.

515
MR. GLIST: Right.

516
MR. DINGWALL: And the extrapolation is based on experience in other jurisdictions?

517
MR. GLIST: Well, for example, I can think of a case where we might have had two dozen municipal distributors in Vermont. And the smallest ones just didn't have the data, you know, but the data available from the others was sufficiently representative that it could be adopted by the remaining distributors.

518
And so I think, when I looked at page 26, what I could see Mr. Ford doing was saying, Well, I can start with a net-embedded book that was advanced by a hydro that's been looked to as representative by other hydros in negotiations. And I'm going to assume, he says, that investment in new plant is roughly offset by depreciation of embedded plant. So I'll keep that level. But then, as I go to expense figures, I'll adjust those forward in order to try to bring them current.

519
So he's done the work that a regulator would do in the absence of publicly-reported, specific, current input data from each of the participants. And he's come to a number that is sort of

above U.S. norms, but
one that he's comfortable with as representative.

520

MR. DINGWALL: Okay.

521

Mr. Ford, in looking at, for example, net-embedded costs per pole, since that seems to be the most kind of localized small market figure, in any of the proceedings in Canada over the last few years, has there been a presentation of a net-embedded cost per pole figure for any of those LDCs?

522

MR. FORD: Not that I can recall -- I'm sorry, are you asking me if, for example, in Nova Scotia, the Nova Scotia proceeding --

523

MR. DINGWALL: Alberta seems to come to mind as being the one with the closest thing to a determination.

524

MR. FORD: Well, as I say, I was not involved and haven't had access to the record of the proceeding in Alberta, so I don't -- I only have the decision. And there was no reference to that in the decision. I would have available, I believe, somewhere, the data that was used in Nova Scotia. As a matter of fact, I'm not sure it isn't in the decision, because the decision was quite detailed with respect to the application of the methodology, so we might, in fact, find that number if I were to look there. In any case, it's something I could certainly provide, what the embedded, net-embedded pole costs were.

525

It is a starting point whenever a methodology like this is used, and it is a methodology that was used in Nova Scotia. It was the methodology that's been used by the CRTC in -- when evidence has been provided from the telephone companies, for example. So although that data is quite dated at this point, the last of it being about 1994. So Nova Scotia would be the most recent data. Now, that's a large utility, but I'm not sure that the figures for net-embedded costs would vary that much from what I've seen here.

526

MR. DINGWALL: I wonder, then, before I ask for the undertaking, they would have also reported some form of depreciation expense associated with that?

527

MR. FORD: Yes, they would have. Yes.

528

MR. DINGWALL: I'm wondering if I could ask you, then to make reasonable efforts to review your records and provide, if possible, the net-embedded cost per pole and depreciation

529
MR. FORD: If you just give me a minute, I may possibly have it.

530
MR. KAISER: Is it not in the decision, Mr. Dingwall? Have you
looked at the decision?

531
MR. DINGWALL: I don't have it to hand, sir.

532
MR. BRETT: Mr. Chairman, I think the decision may be in the
record already as an attachment to the
Allstream evidence, and I think Mr. Ford is just having a look at
that.

533
MR. KAISER: Is that page 35, Mr. Ford?

534
MR. FORD: I'm looking at page 35 of the decision, and I see -- the
numbers I believe you were asking
for, Mr. Dingwall, were the net-embedded costs per pole, and that is
\$342. And the
depreciation per pole is in the next line down. I'm looking at, by the
way, the numbers
under the heading: "Board-approved," although I do note that these
numbers are the same
in all columns. \$342 for the net-embedded cost per pole, and \$23.55 for
the depreciation.

535
MR. DINGWALL: Thank you, sir. I certainly won't be asking for the
undertaking, then.

536
MR. FORD: Thank you.

537
MR. DINGWALL: And do you view the Nova Scotia utility as being in
similar circumstances with
respect to age of plant or infrastructure to the general Ontario
situation?

538
MR. FORD: I did notice that there was a reference to typical 40-foot
pole, but also a reference to
30-foot service poles. So I'm not sure that it said 342 dollars in that
decision was based
solely on the total pole population. I'm not sure what that meant,
exactly. And perhaps
there is something in there that would account for a smaller number. I'm
not sure.

539
MR. DINGWALL: All right. I'm wondering, Mr. Ford, whether you've
done, at any point, a
calculation, just out of curiosity, with respect to the 1996 pole
rental rate and
what would happen with that to adjust it for inflation to today's
costs.

540
MR. FORD: I'm sorry, I'm not sure what you're referring to. You mean the
rate that was uniformly in
effect --

541
MR. DINGWALL: That's correct.

542
MR. FORD: -- prior to that time? I have not done that calculation, and
I'm not sure what that rate was,
actually, to be honest. I think it would be a fairly simple calculation
to take that rate and
bring it up to today using an agreed inflation factor such as the CPI. It
would be quite an
easy number to calculate, I believe.

543
MR. DINGWALL: I wonder if I could ask you to do that, then, sir.

544
MR. FORD: I'd be happy to give an undertaking to provide that.

545
MR. LYLE: Sorry, just mark that as Undertaking F.2.2.

546
UNDERTAKING NO. F.2.2: TO CALCULATE THE 1996 POLE RENTAL
RATE AND ADJUST IT
FOR INFLATION TO TODAY'S COST USING AN AGREED
INFLATION FACTOR SUCH AS THE CPI

547
MR. DINGWALL: And finally, what appears to be a potential result of
this proceeding is that the
Board might set a rate, it might not set a rate or it might set a
rate and leave some
degree of adjustment open. It might be that one of the questions is,
who takes the
risk pending adjustment? Should it be a definite rate set or should
it be a rate that
could be open to variation? Should it be a rate that applies until
it's varied? I was
wondering whether or not you have any thoughts in that regard on
those different
parameters.

548
MS. ASSHETON-SMITH: Let me break this into two areas. First,
the application of the rate on the
date that it's made. And in the settlement agreement that was
went
through yesterday I think the parties, with the exception of
MTS
Allstream, agreed that the contractual provisions that were in
place,
because parties had made those decisions and had assumed some
risk
and had planned for some of those risks, that those rates --
those
agreements could have run their course. Bearing in mind that
there are

549
So in terms of when that rate might be varied in the future, as I said, I think I said this before, it would depend on whether either of the two parties felt that there was a significant under- or overrecovery of the costs. And as we proposed in the settlement agreement, that there would be opportunity for either party to come back to the Board to seek a variation from the uniform rate in the event that they could demonstrate, assuming there was reliable costing evidence available, a departure from that rate. I'm sorry, does that answer your question?

550
MR. DINGWALL: Essentially. Thank you, those are my questions.

551
MR. KAISER: Thank you, Mr. Dingwall. Were there any other counsel that had questions of this panel?

552
MR. LYLE: Other than Board counsel.

553
MR. KAISER: Go ahead, Mr. Lyle.

554
MR. LYLE: Thank you, Mr. Chair.

555
CROSS-EXAMINATION BY MR. LYLE:

556
MR. LYLE: Panel, I'm going to be directing most of my questions to Mr. Ford. And sir, if I could turn you to your evidence at tab 4, and to the very end of your report, there's a diagram titled:
"Space allocation on a typical 40-foot pole."

557
MR. FORD: Yes, appendix 2 to my report. I have it, sir.

558
MR. LYLE: Thank you. Now, just to summarize your evidence with respect to how you calculated the 15.5 percent allocation factor. I understand that you added the communications space and the separation space, and then divided that by 2, on the assumption that there were two communications users. Is that correct?

559
MR. FORD: That's correct. And that would result in an allocation or -- sorry. That would result in an assumption of 2.6 feet for each cable user.

560
MR. LYLE: That's right. Yes. And then you took that 2.6 feet and, as a percentage of the usable space of 16.75 feet, that's what works out to be 15.5 percent; is that correct.

561
MR. FORD: That is correct, sir. The 15 -- the total you just gave being
the sum of the 11.5 feet of
power space, the 3.25 feet of separation space, and the 2 feet of
communications space.

562
MR. LYLE: Now, towards the end of your discussion with Mr. Ruby, you were
talking about the
alternate methodology that Mitchell and Yatchew have proposed with
respect to sharing
equally amongst the users what I'll call the non-dedicated space.

563
MR. FORD: I'm not sure that I was involved in those discussions, but I
was certainly here when they
took place.

564
MR. LYLE: Well, I think I heard you say, sir, that you weren't sure on
what the impact would be.

565
MR. FORD: Oh, I'm sorry, to that extent, yes, I did. You're correct.

566
MR. LYLE: So perhaps you could help me now try to figure out what the
impact might be using your
assumptions with respect to the layout of the 40-foot pole and the number
of customers,
and the costs. So, if we were going to try to calculate an allocation
factor assuming that
all three users, the electricity distributor and the two communications
users, are going to
pay an equal share of the costs related to the buried space and the
clearance space, I take
it we'd first add those two numbers and then divide by three?

567
MR. FORD: That would be correct.

568
MR. LYLE: So my calculation is that gets us to 7.75 feet.

569
MR. FORD: 7.75, yes, I get that.

570
MR. LYLE: And then you would add 2.6 feet to that number, would you not?
That being the
dedicated space?

571
MR. FORD: Correct.

572
MR. LYLE: And that, I understand, gets us to 10.35 feet.

573
MR. FORD: That's correct.

574
MR. LYLE: And as a percentage, then, of the entire 40-foot pole, my

number calculates that to be
about 25.8 percent? Would you accept that, subject to check?

575

MR. FORD: I was trying to follow along and I did something wrong and --
but yes, I would accept
that, subject to check.

576

MR. LYLE: And if I turn you then, sir, back into your report on page 26.

577

MR. FORD: I have it.

578

MR. LYLE: And if we were going to calculate the total indirect costs per
pole, based on this
allocation methodology of 25.8, I take it we'd first multiply the number
on line H by the
25.8 percent figure?

579

MR. FORD: That would be correct.

580

MR. LYLE: And my calculation is, that turns out to be roughly \$21.77?

581

MR. FORD: I will accept that, subject to check. That would -- that would
be a revised number in J,
indirect costs allocated; correct?

582

MR. LYLE: That's correct.

583

MR. FORD: Yes. I'll accept that \$21.77, subject to check.

584

MR. LYLE: And then, subject to check, we would then add the total direct
costs of \$2.61?

585

MR. FORD: That is correct.

586

MR. LYLE: And that gets us to a number, in K, of \$24.38.

587

MR. FORD: The mathematics is certainly correct, subject to check on the
earlier \$21.77 figure, yes.

588

MR. LYLE: Thank you, sir.

589

Now, let's assume that the Board accepts, to some extent, Mitchell and Yatchew's
argument that some of
the costs of the shared space should be borne by the telecommunications users.

590

MR. FORD: Well --

591

MR. LYLE: But I'm not asking you to --

592

MR. FORD: No, but perhaps there's a misunderstanding. Because I want to be very clear, that I am not suggesting that none of the costs of the clearance and buried space should be borne by cable users. The issue -- it is the entire costs of the pole, whatever the height, whatever the grade of that -- or class of that pole is. And we're not doing it on a per-pole basis, we're looking at the entire population of poles in order to do that.

593

And according to -- in my model, what results -- and with my formula, the application of my formula, what results is that the costs of the clearance and buried portions, which are common to all users, are shared among users, based on their usage of the actual usable space. So the contribution to those is 15.5 percent.

594

MR. LYLE: Fair enough, sir. Maybe I'll re-phrase my question.

595

MR. FORD: Sorry, I just -- I was a little concerned -- and from some of the evidence that was provided by other parties -- that perhaps there was a misunderstanding, and I thought I should maybe take that opportunity to make sure that it's clear on the record.

596

MR. LYLE: That's fair. Let me re-frame my question.

597

Let's say the Board decided that the allocation approach that was set out by Mitchell and Yatchew was overly burdensome on telecommunications providers, perhaps because of the issue of the benefits of ownership, perhaps for some other reason. Let's make that assumption. But then let's still say the Board decides that some portion of the allocation formula should relate to the shared space.

598

MR. FORD: You mean, over and above the proportionate share, the usage-based proportionate share of that?

599

MR. LYLE: Yes. Let's hypothesize, then, the Board said 50 percent -- when we're calculating the allocation factor, we're going to allocate 50 percent of the clearance and buried space to the distributor, and 50 percent amongst the two users, the two telecom users.

600

MR. FORD: And the Board could make such a decision, I assume?

601
MR. LYLE: And if the Board made such a decision, can we just go through
the same exercise we went through earlier, sir?

602
MR. FORD: I'd be happy to do that.

603
MR. LYLE: In terms of calculations? We'd then have 23.25 feet of shared
space, which we'd now be dividing by 4?

604
MR. FORD: Luckily, the shared space, the common space does not change.
Yes, that's 23.25 feet.

605
MR. LYLE: And dividing that by 4, sir, my number gets us to 5.8.

606
MR. FORD: I have that number.

607
MR. LYLE: And then, once again, we'd add the 2.6 feet related to the
dedicated space?

608
MR. FORD: Yes.

609
MR. LYLE: And that gets us to 8.4?

610
MR. FORD: I have 8.4.

611
MR. LYLE: And as a percentage of the total length of the pole, that's
about 21 percent?

612
MR. FORD: And I did the calculation correctly, I guess, because I have
21.

613
MR. LYLE: And then if we turn back once again to page 26, and we apply
the allocation factor of 21 percent to line H.

614
MR. FORD: Yes, sir.

615
MR. LYLE: I believe we get about \$17.67?

616
MR. FORD: That is correct.

617
MR. LYLE: And then, if we were to add once again line C, the total direct
costs of \$2.61, we'd come to a total, in line K, of about \$20.28?

MR. FORD: That is correct. I can confirm that. 618

MR. LYLE: Thank you. 619

MR. FORD: That would be the result of the calculation. 620

MR. LYLE: Now, I handed out to you during the break, Mr. Ford - and
Panel, you should have a copy of this - it's an excerpt from the Board's Electricity Distribution Rate Handbook. And
towards the bottom of the page, and at the top of the next page, there's a table titled
"Table 3.1." 621

MR. FORD: Yes, I have it. 622

MR. LYLE: And I understand your evidence is that, in calculating the
weighted average cost of capital, that the deemed equity ratio that you used was 40 percent? 623

MR. FORD: That is correct. 624

MR. LYLE: And the deemed debt ratio was 60 percent? 625

MR. FORD: That is correct. 626

MR. LYLE: And you used an interest rate of 6.9 percent? 627

MR. FORD: That is correct. 628

MR. LYLE: Did those numbers come from the bottom line on that page? 629

MR. FORD: Well, sir, I thought they did until I compared this with my
evidence, and I do note that in my evidence I made reference, in the first paragraph on page 25, to using
the appropriate -- the deemed capital structure and interest rate for a utility with a
rate base in the range of 500 million to 1 billion, and I see this is 250 million to 1 billion.
But, certainly, that was my intent, and I'm not sure where the 500 million figure came from.
But that was certainly -- my intent was to use the Board's figures, yes. 630

MR. LYLE: Okay. Now, how many utilities in Ontario, to your knowledge,
have a rate base over \$250 million? 631

632

MR. FORD: I do not know that. Again, this was information that we had hoped to obtain, but we were not successful in getting a lot of information. I just do not know the answer to that question.

MR. LYLE: If I was to suggest to you there's only a handful, you wouldn't have any knowledge that would contradict that?

MR. FORD: I really -- I'm sorry, I really couldn't be helpful to you. I don't know the answer to that.

MR. LYLE: Now, turning to the return on equity. If you look up towards the top of that two-page document that I gave you, in the second paragraph of the first page --

MR. FORD: Yes, sir.

MR. LYLE: -- there's a reference to the target return on equity of up to 9.88 percent.

MR. FORD: That is correct.

MR. LYLE: Now, can you explain to me why you used the 8.5 percent figure?

MR. FORD: I indicated that that was the allowed return on equity of 8 point -- that was used by the CRTC in arriving at its decision in telecom decision CRTC 99-3.

MR. LYLE: Okay. What I'd like to you undertake to do, sir, is, if using -- you could use the ROE figure of 9.88 percent and then calculate for me a weighted average cost of capital using the deemed equity and debt ratios and interest rates that are referred to on the second page of that document for rate a base between 100 and 250, and also for rate base for utilities under 100. Can you do that?

MR. FORD: If I could just clarify, then, what you're asking me to do as an undertaking. It is to determine a weighted average cost of capital, using the 9.88 percent target rate of return on equity, and applying the capital structure ratios, debt/equity ratios, in the debt ratio deemed in the last two lines of the table that -- oh, sorry, the top two lines, then, on page 3.8?

MR. LYLE: That's correct. And also the interest rates that are referred to in those.

644
MR. FORD: Yes, sorry, including the debt rates, yes.

645
MR. LYLE: Yeah.

646
MR. FORD: And I guess if I could ask for clarification, in terms of -- as I indicated, I did apply or include in my calculation the payments in lieu of taxes, applying an income tax rate of -- this would be a combined federal and provincial tax rate of 36.6 percent, which I believe was the combined federal and Ontario income tax rates for non-manufacturing entities in 2003. What income tax rate would you like me to use, sir?

647
MR. LYLE: You could use that number, Mr. Ford.

648
MR. FORD: Thank you.

649
MR. LYLE: And that's just the first half of my undertaking, though. I'd also like you to calculate for me, using those new debt/equity structures and interest rates, the total annual pole rental charge, if you were to use the three allocation methodologies that we just talked about previously, one being yours at 15.5, the other one being at 25.8, and the third one being at 21.

650
And with that, my undertaking is complete. And we'll mark that as F.2.3.

651
MR. FORD: I'll do my best, sir.

652
COST OF CAPITAL UNDERTAKING NO. F.2.3: TO CALCULATE THE WEIGHTED AVERAGE
USING (A) A DEEMED EQUITY OF 45% AND DEEMED DEBT
RATIO OF 55% WITH AN INTEREST RATE OF 7% AND AN ROE
OF 9.88%; (B) A DEEMED EQUITY OF 50% AND DEEMED DEBT
RATIO OF 50% WITH AN INTEREST RATE OF 7% AND AN ROE
OF 9.88%

653
MR. LYLE: Thank you. Now, I want to take you, sir, to the CEA evidence, and it's tab 3. I believe this is a report that was prepared by Mr. Wiebe.

654
MR. FORD: My version wasn't tabbed but would that be schedule 3, then, that you're --

655
MR. LYLE: Yes, it's also referred to as schedule 3.

656

MR. FORD: I assumed it would be. Thank you.

657

MR. LYLE: And there's a number of criticisms of your report in this document and I'd just like to get your response to some of those. On page 5, at paragraph 15, there's a statement that the fact that the minimum ground clearance must be measured at the lowest sag point of the cable demonstrates a deficiency in your analysis. The statement goes on to say that you do not appear to recognize this issue and you seek to incorrectly apply clearance figures at the pole instead of in mid-span. Can you comment on that statement?

658

MR. FORD: I can only comment that the assumption I made with respect to the typical pole was submitted by the MEA, predecessor to the EDA, in the negotiation and eventual application process that resulted in telecom decision 99-13. It has been attached as part of, I believe it's appendix E to the draft MEARIE agreement, and it is also attached or included as part of Hamilton Hydro's response to interrogatory responses that was filed by the EDA last week.

659

So I certainly do not put myself forward as an expert on poles, and I merely accepted what is regarded by the industry, apparently, as a typical joint-use distribution pole for purposes of this proceeding.

660

MR. LYLE: And if I turn you to page 6 of that report, there's a reference in brackets, starting on the second line. It says:

661

"(The amount of power pole space varies quite considerably and is certainly not fixed at the 11.5 feet alleged in the Ford report.)"

662

MR. FORD: Well, I agree, sir, and that certainly has been my observation. And it's amazing when you get involved in a proceeding like this how many poles you look at as you drive across the country, especially in Northern Ontario when there isn't a lot else to look at. But I would agree, there certainly is a wide variance. And again, what we're talking about is an average, is a typical pole, and I would refer you to the same sources of information. I'm not a pole expert. I accepted what the industry appears to believe is typical.

663

MR. LYLE: And then if I could turn you to page 7, paragraph 21. There's a statement there that:

664

"Power poles are not typically 40 feet in height. In fact, there's more 35-foot poles than there are 40-foot poles."

665

What's your comment on that?

666

MR. FORD: I, in fact, did a calculation of the weighted average of the height of those poles. And one has to make an assumption that poles 25 or under are 25 feet, and poles 65 feet or over are 65 feet, in order to arrive at a precise number. And I did that, and I came up with 40.05 feet. And I asked in an interrogatory, or through the CCTA, a interrogatory to CEA, and they confirmed that was the case, but referred me to -- or referred us to additional data which they provided in this proceeding. And in a response to the interrogatory, which is appendix B to their interrogatory responses, the weighted average pole height, based on the new data, is just something under 40 feet. 39 point some feet. If you can give me a second, I can probably access that information to put on the record.

667

MR. LYLE: Sure.

668

MR. FORD: Yes, what I'm making reference to here, just for clarity, is in appendix B to CEA's responses to interrogatories pursuant to the Board's order number 3. And my first reference to the weighted average height of the poles on page 7 can be found in the response to CCTA Interrogatory No. 7, where we asked to confirm that the weighted average pole height for all poles included in the table on page 7 is 40.05 feet. The response was confirmed.

669

"However, this weighted average does not recognize the diversity of pole lengths in use across Canada. See appendix B."

670

And appendix B, in the first page, provides a summary of additional data. And if one uses the same assumptions in terms of a poles 25 feet and under being 25 feet and poles 65 feet and over being 65 feet, one arrives at a weighted average of -- and I can't put my hands on the result of the calculation, I'm sorry. I thought I was going to be able to give that. But I can give that as an undertaking for sure. It's on a separate calculation that I just don't appear to have here.

671

MR. LYLE: So perhaps, then, we will make that Undertaking F.2.4, calculation of the weighted average of pole heights based on updated evidence.

672
MR. FORD: Based on the CEA's evidence contained on page 1 of appendix B.
Yes, I'll be happy to do
that, sir.

673
WEIGHTED AVERAGE UNDERTAKING NO. F.2.4: TO PROVIDE A CALCULATION OF THE
OF POLE HEIGHTS BASED ON THE CEA'S RESPONSES TO
INTERROGATORIES CONTINUED ON PAGE 1 OF APPENDIX B

674
MR. LYLE: Thank you.

675
Finally, I just have one question for you, Ms. Assheton-Smith. And if I could refer
you to Ms. Kravtin
and Mr. Glist's report.

676
This is a quote that Ms. Friedman put on the record yesterday. It's at the bottom
of page 16, and
continuing on to 17. I'll just read it for you. It states:

677
"Regulatory intervention is needed to help ensure the negotiation process produces
an outcome that
effectively and efficiently balances the interests of the two parties and at the
same time promotes the
public policy goals of a competitive telecommunications market and the widespread
deployment of
advanced, information-age services and technologies."

678
And my question for you is: This Board is an energy regulator. It has objectives in
its statute which are to
guide it in its decision-making. Those include protecting the interests of
consumers with respect to
electricity prices. They include ensuring a financially-viable electricity
industry. Can you explain for me
why these telecommunications public policy goals are something that the Board
should be considering as
it makes its decision?

679
MS. ASSHETON-SMITH: I'll acknowledge that the Board as a
creature of statute has to be guided
by its statutory mandate, and we certainly don't take issue
with that.

680
I think, as Mr. Glist said yesterday, that these outcomes are happy benefits that
result from the Board
actually exercising its statutory mandate to establish just and reasonable access
conditions to power poles
in Ontario.

681
I would not suggest that the Board needs to look beyond its own statutory mandate
in order to make its
determination in this matter. But I would agree with Mr. Glist and Ms. Kravtin's
report, that these are

public -- general public policy outcomes that would result from access to power poles in Ontario. But they're not a necessary input, by any means. And we certainly didn't mean to suggest that the Board should look beyond its own statutory mandate to make a decision.

682
MR. LYLE: Thank you, Mr. Chair. Those are all my questions.

683
MR. KAISER: Thank you, Mr. Lyle.

684
[The Board confers]

685
QUESTIONS FROM THE BOARD:

686
MS. CHAPLIN: Thank you.

687
Just following up, to start with, Mr. Ford, on the undertaking you're giving regarding the weighted average of the pole height. Would I be correct in assuming that what would also matter is, sort of, the distribution of attachments across pole heights, if we're trying to find a typical pole with attachments?

688
MR. FORD: Well, as I indicated yesterday, I believe it was in a discussion I was having with Mr. Ruby, the -- what we're concerned with is, primarily, the average number of attachments to poles which also have cable attachments, because that is what is important in deriving a rate for cable users.

689
MS. CHAPLIN: Right. But I guess what I'm trying to find out is that, even if the average -- weighted average pole height is 40 feet, if most cable and telecom attachments are -- if the distribution of those types of attachments is not equal across pole heights, then the representative pole that has a cable and telecommunications attachments might be different than that 39 feet, which was you gave in your testimony?

690
MR. FORD: I'm not sure that there is any relationship between communications users and pole heights.

691
MS. CHAPLIN: Okay.

692
MR. FORD: And, as I say, I'm not a pole expert but I would certainly turn to -- and check to see whether either of our industry representatives are aware of pole heights

that vary with the
number of attachments, i.e., does communications space vary, I guess,
would be another
way of trying to get around -- trying to get what you're asking about.

693
MR. GREENHAM: I wouldn't be able to add much. We're on 65-foot
poles. We're on 35-foot poles.
We're on 45-foot poles. We don't shy away from any particular pole
for any
particular reason.

694
MS. CHAPLIN: Okay. Thank you.

695
And I guess this question is for Mr. Glist and Ms. Kravtin, and probably also for
Mr. Ford. I understand
the CCTA application is for a uniform rate. Perhaps, in the best of all possible
worlds, would your
preference be for a formula rather than a uniform rate? Or do you believe a uniform
rate is more
appropriate?

696
MR. GLIST: In my view, a uniform rate based upon a
proportional-use formula is ideal, in that it's
providing two things: It provides a savings on transactional costs,
and it provides an
approach for parties to potentially update it privately, based on a
known formula from a
regulatory body.

697
MS. CHAPLIN: So, in a sense, a uniform rate that's based on an
explicit formula.

698
MR. GLIST: Yes.

699
MS. CHAPLIN: And that would provide guidance to them?

700
MR. GLIST: Yes. Because the benefits that have been recognized
by sister regulators of a clear
formula, with clear input data, is that it actually facilitates
updates and negotiations
outside of formal regulatory processes, and saves a lot of
transaction costs on everyone
involved.

701
MS. CHAPLIN: Okay. And Mr. Ford, in your evidence -- let me find
the page -- on page 26,
where you have the table of figures --

702
MR. FORD: I have it.

703
MS. CHAPLIN: Okay. And just in the paragraph above that table, you
explain that you expected

determine a rental charge based on more current and representative data. Now, you've explained how that's not been available. And as I understand it, you've taken some comfort, if I may characterize it that way, from the Hamilton data.

704

Are you comfortable that this data, which is based on one company, is representative?

705

MR. FORD: I would be a lot more satisfied that it was representative if it was based on more data, but at this point, I don't have any reason to say that it's not representative. So -- it's a difficult question to answer, as I'm sure you appreciate.

706

But, I mean, the fact that two very different-sized utilities came up with numbers, one based in 1997, one based in probably 2003 data, and there were about four times difference in terms of the size of their pole population, they came up with very similar numbers. And, after all, what we are talking about here are poles. I mean, it is not something where the technology changes over time. It's something that is depreciated very slowly, at a rate, I think we've discussed, usually of 4 percent per year. So they are long-life assets.

707

I don't think the numbers are going to be significantly different from one utility to another. So given that, yes, with time -- if they were installed at a different time, there could be subtle differences, but I would think -- we're looking at a broad range of utilities -- that those specific numbers could probably be useful.

708

And I would also point out that in the proceeding leading up to decision 99-3, that was the data that was offered by the industry. So, whether it -- I would be very surprised if the industry were putting forward data that was not representative.

709

MS. CHAPLIN: And I have one final question. There was some discussion yesterday regarding whether -- from, I believe, it's questions from EDA -- regarding whether from a societal perspective, it might be preferable for the electric utilities to build poles that took into account, in advance, what the potential needs might be of cable and telecom providers. Do you recall that discussion at all? I think it might have been Ms. Kravtin.

710

MS. KRAVTIN: Yes.

711

MS. CHAPLIN: If that were to be the case, I mean, I think what you said was, you hadn't been given -- I think maybe it must have been Ms. Assheton-Smith, you said you hadn't actually been given that opportunity. If, for example the LDCs were to proceed on that basis, do you feel that that would have any impact on what the appropriate charge for your members would be?

712

MS. ASSHETON-SMITH: I'll give you my answer and I'll hand it over to Patricia -- MS. Kravtin to add her thoughts. But I think the reality is that we're -- our plant is on over 300,000 poles in Ontario already which haven't been built to take into account our needs or expectations. And the reality is, I think it's shown all the way through the evidence, that the preference of the LDCs has not been to involve cable in their planning. And I haven't seen any indication on the record that this hypothetical approach where they would consult and we would have input from the outset is something that they would contemplate seriously or would want to contemplate. So it's very difficult to answer in the absence of knowing how that would actually take place, and whether it would work. But perhaps I can pass that on to --

713

MS. KRAVTIN: I was just going to comment that I think what came out in the cross-examination yesterday and today is that, through the LDCs' joint-use agreements with Bell Canada, that, in fact, their poles are designed to include communications space. So that I don't think there really would be any sort of change that's contemplated for cable. And to the extent there are changes required to accommodate cable, those are applied through the make-ready charges that the cable industry pays. So I think it was raised in cross-examination in a bit of a hypothetical sense when you look at what is really happening.

714

MS. CHAPLIN: Right, and I guess what I'm trying to do is, I understand that you -- it's my understanding is that your view of the hypothetical is that it's very far-fetched, I suppose that's the word. But if that there were to be the case in the future for poles where -- future poles, in a sense, if they were to be overbuilt, let's say, as a characterization, do you feel that that would have an impact on what

the
deriving an appropriate costing methodology would be for deriving a rate? For
attachment fee?

715

MS. ASSHETON-SMITH: I can't comment on that unless one of my
colleagues can.

716

MR. FORD: Perhaps I could help a little bit here, and I think we're all
fumbling a little bit. But if, for
example, some of the costs that are now paid as make-ready costs were, in
fact, avoided
because of the fact that cable's very specific needs were taken into
account through a
planning process and the utility incurred specific costs in order to do
that, in other words,
it would be a trade-off between the utility making the expenditure and
therefore
including it in the embedded cost of the pole as opposed to the utility
making the
expenditure at the time a permit is made, and then flowing that cost
through as an
up-front charge, a one-time charge, then that would be reflected in the
embedded cost of
the pole, and would therefore be recoverable. And I think that could be
captured in that
way. It would be in the nature then, I would say, of a trade-off between
including it as an
ongoing charge and including a -- recurring charge, and including it as
an up-front
charge.

717

MS. CHAPLIN: Thank you very much. Those are my questions.

718

MR. SOMMERVILLE: I have no questions.

719

MR. KAISER: Mr. Ford, can I turn you to page 21 in your evidence.
We're all familiar with this by now.
We know that the parties agree on the recovery of the incremental
costs or indirect costs
and what we're arguing about is the split or allocation of the
common costs. And you've
explained how you gave us the 15.5 percent, and Mr. Lyle has taken
you through some
examples that yield 21 percent and 25.8 percent. Your approach, as I
understand it, and
this is reflected best in the diagram at the end of your evidence,
is that there are discrete
pieces of territory on the pole, if I can put it, that are used by
the cable companies.

720

MR. FORD: I think that's a fair statement, sir.

721

MR. KAISER: Now, we heard some evidence this morning about, and
this is new to me, so you'll have
to help me, about overlashing, which -- I think that's what Mr. Ruby

called it -- which is essentially a concept where everyone was hanging on the same bolt. Are you familiar with that?

722

MR. FORD: I don't -- I would turn to my industry colleagues, but I don't believe it's all one bolt. I think it is making use, perhaps, of an existing strand but there could well be two strands bolted to the communications space.

723

MR. KAISER: Maybe I'll come to you, Mr. Armstrong.

724

MR. FORD: So perhaps we'll let --

725

MR. ARMSTRONG: Mr. Chairman, and I'll let Mr. Greenham jump in at any time because he has better technical knowledge than I do. Through the negotiation of joint-use agreements with LDCs, we often find that there's 2 feet of communication -- we refer to 2 feet of communications space on any pole. That yields three places, three spots for communications companies to put their equipment or hang their wires. Often, the way that we discuss it through the negotiations is that the bottom space is reserved for Bell Canada, the middle space is reserved for the cable television industry, and the top space is reserved for the LDC's affiliate telecom carrier.

726

Clearly there are more players in the market than just those three, and what often happens or what can happen is, Allstream might approach Bell. Allstream might approach any one of the three and say to one of those three: Can I overlash my fiber to your strand? What that has the effect of doing is ensuring that that -- or hopefully ensuring, anyway, that that pole doesn't get boxed in by having telecommunications strands on two sides of the pole, it's only on one side of the pole. That's one way in which overlash occurs in the industry.

727

A second way in which it occurs is, the cable company over the years has consistently deployed more fiber in its network in order to increase the bandwidth and deliver more services to the customers. And so what we will do is, we will try and drive fiber closer to the customer. So we might already have a strand and a piece of distribution cable up on a hydro pole, but then we will come along and overlash our own fiber to our own strand at a later date some time.

728

MR. KAISER: Now, you mentioned this morning that the LDC

overlashed.

729
MR. GREENHAM: Yes, I mentioned that this morning.

730
MR. KAISER: And why are they doing that?

731
MR. GREENHAM: They are doing that -- currently we are working on an agreement with Ottawa Telecom, or the LDC arm of the Ottawa Hydro, for them to overlash to our facilities in the Cornwall area, so that they can get to a customer of theirs. We have done exchanges with Kingston Hydro and their telecom arm so that they can overlash fiber to our facilities to get, again, to their customers. And we've also done the same agreements and exchanges for use of space with Ontario Hydro or Hydro One telecom.

732
MR. KAISER: But I guess my question is this: To the extent that -- well, is this overlashing concept becoming more prevalent?

733
MR. GREENHAM: Actually it's an older -- it's been around for years and years and years. It was originally part of the original placement of Bell placing cable for us on their strand, and that was under the partial systems agreement. And then we've since gotten rid of and bought back all of that and now it's still in place, but it's now under a support structure agreement with Bell Canada. So that there's quite a bit of history to overlashing facilities.

734
Typically, and John had a very good point about lashing to existing facilities that are already owned by the cable company to get fiber closer to the customer, and the instance where the LDCs are overlashing to us or where we would try to overlash to Bell, typically are to avoid make-ready costs. On substandard poles where clearances are compromised and there's an existing strand on that pole, instead of paying the make-ready costs to upgrade the pole, you can make use of the existing strand that's there to avoid that cost.

735
MR. KAISER: All right. Now, you mentioned, I think it was Mr. Armstrong, that you divide this communications space into three parts.

736
MR. ARMSTRONG: Correct.

737

MR. KAISER: What happens if the hydro company is there, the telephone company is there, you're there, and what happens if MTS Allstream comes along? Where do they fit into this equation?

738
MR. ARMSTRONG: That's where overlashing comes into play. And they could overlash, you know, depending on a permit approval, they could overlash to any one of those three, essentially.

739
MR. GREENHAM: If I could add. CSA standards, everybody's been quoting the 1-foot separation, and that applies in a lot of cases. But there are other cases where you cannot bend the rules, but the rules allow for separation of 8 inches; it allows for placement on the back side of the pole so that you could actually have three attachers on the front side of the pole and three attachers on the back side to have pole.

740
Now, that's a practice that's frowned upon by the LDCs because it's very difficult to change that pole in the case of an emergency, because it's very difficult to raise a new pole between existing facilities.

741
In some cases, based on design -- or future plans for that pole line, the LDC will actually direct you to go to the back side of the pole, because in five years or two years they plan on placing that pole line behind the existing pole line so it will make it easier for you to transfer your services and they won't have to top the pole to be able to do that.

742
So there's so many variations of what happens to a pole and what's connected to a pole. It's very difficult for everybody here to generalize all of the concepts and all of the actual placement and uses in that communication space on a pole.

743
MR. KAISER: Now, Mr. Ford, you've mentioned, and this is referenced on page 21, that -- you took this really from the CRTC, that the calculation of 15.5 was really based upon a notion that there were two attachers.

744
MR. FORD: That is correct.

745
MR. KAISER: Now, what happens if we have three? What happens, as this industry opens, we have competing telecommunication companies and they want in? What does that do to your

746
MR. FORD: Well, it doesn't change the formula, sir. That's -- the formula is capable of adjusting for that. If the --

747
MR. KAISER: Let me just interrupt, then. Is that what you would propose, that if there was a third attacher, that everyone's rate would ratchet down, or are you suggesting the third guy gets a free ride or what?

748
MR. FORD: No. No, the -- certainly it's not my -- and I don't think anybody would suggest that the third one should get a free ride. What I think the approach is certainly very capable of dealing with, the addition -- the addition of more users of the communication space, and if that number were to be -- to become, on average, greater than two, it would result in an overrecovery of the costs. The rate would be applied to additional users and therefore it would be appropriate to adjust the calculation to reflect that.

749
Now, it's my guess that all parties, once an approach is established, would be prepared to recognize that if the number of attachments, the number of users, increased significantly beyond two, on average, that it would be appropriate to adjust the rate.

750
MR. GREENHAM: If I may. In most of the agreements that are being negotiated, a clause in that deals with doing a system audit of all the poles in this -- so that you can make sure that your permits are up to date. And at that time they record all of the users of the pole. So the agreements would allow for you to record how many users and what your average number of users are on a pole, to help facilitate -- you know, identifying where there's an overcompensation.

751
MR. KAISER: I understand that. But I want to get your position. Your rate, as you've calculated it, coming from the 15.5, is based upon two.

752
MR. FORD: Yes.

753
MR. KAISER: There's a third party in this room, in this case, and they're looking for a rate, too. Now, do you have any views as to how that rate should be handled? Whether there's an adjustment to your rate, what their rate should be? I mean, there are a number of scenarios. We could do nothing until somebody decided to adjust it, or we could

deal with it now. But it
is going to be a live issue. They're sitting out there.

754

MR. FORD: Well, it certainly -- I think it was agreed, and I may be speaking a little bit out of turn, but in terms of the -- in terms of the settlement agreement, I believe it was indicated that it should -- the rates should apply to all parties. So I don't think there's any indication that anyone would ever be a user of a pole without paying a charge for that. I mean, through the permitting process, users of poles are identified --

755

MR. KAISER: No, I understand.

756

MR. FORD: -- to the utility. And what I'm saying is that, over time, if a number of attachments, number of users, on average, increased such that two was no longer an appropriate number and that it was resulting in an overrecovery, well, the utility basically are getting more attach -- more revenue than the cost model would indicate was appropriate, then I think there would be pressure to either adjust the rate downward through, perhaps, a portion of the agreement, or parties could come to the Board and say, certainly in this jurisdiction, the assumption of two users is no longer appropriate; the average is three users of the communications space, and that therefore a portion of the cost should, therefore, be reduced, the rates should therefore come down.

757

MR. KAISER: Would you agree with this: In a case where Videotron or Allstream attached to a pole, in all likelihood, they're going to be the third one; in all likelihood, there's already going to be two of you there.

758

MR. FORD: Okay.

759

MR. KAISER: And we're here to talk about rates, not just with respect to the cable companies but with respect to the competitive telecoms. So do you have any position as to what the rate should be in those cases where there's not two but there's three, i.e., in those cases where a competing telecom comes along?

760

MR. FORD: Well, I think the rate should apply the same to each user of the communications space, and I'm saying that the formula that I have put forward, I believe, is capable of taking care of that. And if -- we're not pricing pole by pole here. I mean, we're looking at the average.

761

MR. KAISER: No, I understand.

762

MR. FORD: And if the average number -- if two is no longer an appropriate number for the average number of users of the communications space, you know, if 50 percent of the poles have two and 50 percent of the poles have three, then I would think it would be appropriate to use two and a half. In other words, I think as the industry evolves, and over time, the approach is quite capable of dealing with that.

763

MR. KAISER: All right. So let me understand you.

764

If I understand your answer, you would say, let's do nothing now, even though the LDC may be overearning in the short run. When we get enough of these competing telco attachments, we'll average it down. Is that your position?

765

MR. FORD: I think in a nutshell, yes. I certainly -- I certainly think that cost recovery -- appropriate cost allocation/cost recovery are the principles, but with a practical bent to it. So that you don't want to go changing the rate every second Thursday because that's when permits are issued, but at the same time, trying to arrive at a rate that can be applied for a reasonable period of time to minimize regulatory burden, to minimize transaction costs and that sort of thing. But certainly the intent is to reflect reality.

766

MS. ASSHETON-SMITH: Could I just add on to that.

767

Certainly, if the Board, in reviewing the evidence before it in this proceeding, is of the view, based on the evidence, that it appears the assumption of two users per pole is conservative, I don't think the Board is precluded from adapting its approach to Mr. Ford's formula to reflect what it views as the evidence. So if it wants to up that to 2.5, I would suggest that that is within your prerogative to do so, if that's what you consider the evidence supports.

768

MR. KAISER: Mr. Glist, any experience in the U.S. on this?

769

MR. GLIST: The closest experience in the U.S. in terms of counting users, the FCC has, for example, the presumption that in rural areas there are three users, including two telecom users. They also reached the conclusion that you wouldn't redo the formula every second Thursday, but you would track, over time, and the industries could

come back for

reevaluation, or they could contract for more granular rates.

770

So there could be an agreement that said, actually, when the next telecom user goes on, everybody ratchets down their rate a little bit. It's some kind of self-adjusting that could be contracted for if there were that kind of guidance from the regulator.

771

MR. KAISER: Mr. O'Brien, you negotiated an agreement, as I recall, between the OCTA and I think it was Hydro One.

772

MR. O'BRIEN: That's correct.

773

MR. KAISER: And how many poles were involved in that in round numbers.

774

MR. O'BRIEN: Roughly 200,000.

775

MR. KAISER: All across the province?

776

MR. O'BRIEN: Yes.

777

MR. KAISER: Is there a standard rate all across the province?

778

MR. O'BRIEN: Yes.

779

MR. KAISER: And this is one of these contracts, presumably, that has the retroactivity clause?

780

MR. O'BRIEN: No. No, this was a fixed rate for, actually, a four-year period which expires at the end of this year.

781

MR. KAISER: And one other question, Mr. Ford. You mentioned in your evidence, you considered it a factor the fact that there was increasing competition in this industry, convergence if you will, with the LDCs going into telecommunications and the cable companies now competing with the phone companies. To the extent -- and think there's some interrogatory on this that says there may be 22 of these electricity companies that are now in the communication business. How is that relevant to this proceeding?

782

MR. FORD: Only, sir, that I believe that the approach should be cost-based, in terms of developing an

appropriate user charge, and that it should apply uniformly to all users of the space.

783

MR. KAISER: One of the questions before, so that you know, is whether we should even regulate in this area at all. Is the degree of competition to or the extent to which electric companies going into the communications business relevant to that question? If your colleagues wanted to answer this, that's fine.

784

MS. KRAVTIN: I certainly would believe that to be the case. And that's part of the consideration that we raised in our report, that the issue of convergence does bring telecom into consideration by this Board, because it deals directly with affiliate relationships between the LDC and its telecom affiliate. It also, obviously, provides the LDC with an increased incentive and opportunity to leverage its monopoly power in the distribution market into the competitive competition market -- the telecommunications market. So those factors we believe to be relevant to this Board.

785

MR. KAISER: And one final question on that point. It's, I think, a matter of public record that some of these companies, Toronto Hydro's one, they have a subsidiary, Toronto Hydro telecom, that's substantially involved in the commercial side of the telecommunication business, particularly in downtown Toronto. Let's suppose they want attachment, should they pay? Should they pay the same rate as you pay?

786

MS. KRAVTIN: Yes, they should.

787

MR. KAISER: I'm talking about a telecom subsidiary of the hydro company.

788

MS. ASSHETON-SMITH: Yes. Under our settlement agreement, we agreed that it would apply to telecommunications carriers, as defined under the Telecommunications Act, and the telecom affiliates of the hydro companies are actually regulated telecommunications carriers under the CRTC.

789

MR. KAISER: So the affiliates have agreed to that?

790

MS. ASSHETON-SMITH: I don't remember them being in the room, but their parent companies were in the room for the settlement agreement.

791
MR. KAISER: Right, and do they understand that concept that
they're somehow bound by your
settlement agreement that they're going to be required to pay if
they seek a separate
attachment?

792
MS. ASSHETON-SMITH: I can't speak for them on that point.

793
MR. KAISER: Can you speak to that, Mr. Brett?

794
MR. BRETT: I don't think I can speak for them either, Mr.
Chairman. I mean Toronto Hydro and
Hydro One were in the room but not everybody was in the room.

795
MS. DJURDJEVIC: Mr. Chair, speaking for Toronto Hydro, I
was present, and we're all well aware,
the affiliate, the parent company, and the regulated company,
everybody's aware
of the settlement agreement, and takes no issue.

796
MR. KAISER: So I take it that you agree that Toronto Hydro
Telecom should pay the same as the cable
companies would pay.

797
MS. DJURDJEVIC: If that's the course the Board chooses to
pursue, then yes, we would all be bound.

798
MR. KAISER: What I'm trying to understand is whether you already
agreed to that as part of the
settlement agreement.

799
MR. BRETT: I don't think we've agreed to a rate but we have
agreed to the principle.

800
MR. KAISER: You have agreed to the principle. Right.

801
MS. KRAVTIN: Mr. Chair, if I may. I think the point you make is
very important that certainly, at
also want to a minimum, the affiliate should agree to pay the same rate. But I
because the raise the point that it doesn't justify an abusive or high rate just
same company. It's affiliate also is bound by that rate, because obviously it's the
pattern through going from one division to the other. And we've seen this as a
affiliate is monopoly companies where they set a high rate and say, well, our
corporation. paying it. But it's going into their profits of the larger

802
So if anything, that's an additional reason why the rate must be set at reasonable
cost-based levels,
because it will affect the different corporate entities differently.

803
MR. KAISER: Thank you very much. Thank you, panel.

804
MS. PANTUSA: Mr. Chair, if I may interrupt, Hydro One. We just
want to confirm that Hydro
One Networks does charge Hydro One Telecom the same rate as it does
the other
cable companies.

805
MR. KAISER: Thank you for clarifying that.

806
Mr. Lyle?

807
MR. LYLE: I'm not sure if Mr. Brett has any redirect at this time?

808
MR. BRETT: No, I do not, Mr. Chairman, Panel. Thank you.

809
MR. KAISER: Thank you. Could this panel be excused, Mr. Lyle?

810
MR. LYLE: Yes, Mr. Chair.

811
MR. KAISER: Thank you very much for coming all this way. You've
been of great assistance to the
Board.

812
Mr. Ruby, do you have your witness?

813
MR. RUBY: I do, and perhaps -- I know there's not much time, but it may
be a good time, if the
Panel's inclined, to take a five-minute break while we switch over.

814
MR. LYLE: I think we better keep it to 5 minutes, Mr. Chair. We're quite
tight for time, and Mr.
Wiebe has to leave right at 5 o'clock to catch a plane.

815
MR. KAISER: All right.

816
--- Recess taken at 3:30 p.m.

817
--- On resuming at 3:36 p.m.

818
MR. KAISER: Please be seated.

819
Mr. Ruby.

820
PRELIMINARY MATTERS:

821
MR. RUBY: Thank you, sir. Just as a preliminary matter, Mr. Wiebe's curriculum vitae was pre-filed with the Board but I understand from Mr. Lyle that it doesn't actually have an exhibit number. So perhaps we can take care of that.

822
MR. KAISER: Mr. Lyle.

823
MR. LYLE: Yes, we can mark it, sir, as Exhibit E.2.1.

824
EXHIBIT NO. E.2.1: CURRICULUM VITAE OF MR. ERNST WIEBE

825
MR. KAISER: Thank you.

826
MR. RUBY: Thank you. Thank you very much, Mr. Chair and Panel. I would like to introduce Mr. Ernst Wiebe of Manitoba Hydro. As Mr. Lyle pointed out, unfortunately he's off to Chicago this evening on business so I will try and be as brief as I can so he can get to the airport on time.

827
Mr. Wiebe, just to get one thing out of the way, does --

828
MR. KAISER: Just before we proceed, I think we'll swear the witness. Even though he's going to be here for a short time.

829
CEA PANEL 1 - WIEBE:

830
E.WIEBE; Sworn.

831
EXAMINATION BY MR. RUBY:

832
MR. RUBY: Thank you. Mr. Wiebe, does Manitoba Hydro, or for that matter do you, have a commercial interest in the outcome of this proceeding?

833
MR. WIEBE: No, we don't, we have no poles here.

834
MR. RUBY: And does Manitoba Hydro own any poles in Ontario?

835
MR. WIEBE: No, it owns no poles in Ontario.

836
MR. RUBY: Mr. Wiebe, how long have you been with Manitoba Hydro?

837
MR. WIEBE: I've been with Manitoba Hydro since 1974.

838
MR. RUBY: And I understand that you have responsibility for Manitoba
Hydro for the joint use of
power poles?

839
MR. WIEBE: Yes, I have responsibility for that.

840
MR. RUBY: And just to cut to the chase, that includes both the business
side and the engineering
side?

841
MR. WIEBE: Yes.

842
MR. RUBY: Okay. We've heard in the last few days a lot of talk about a
particular CSA standard. Are
you involved with the development of that standard?

843
MR. WIEBE: Yes, I'm the current chair of the technical committee
writing that standard.

844
MR. RUBY: How long have you been involved in the development of that
standard?

845
MR. WIEBE: I've been involved in the development of that
standard since 1989.

846
MR. RUBY: And does that standard apply both to communications facilities
and electricity facilities?

847
MR. WIEBE: Yes, it does.

848
MR. RUBY: And you're also, I understand, a member of the CEA's joint-use
task group.

849
MR. WIEBE: Yes, I am.

850
MR. RUBY: And how long have you been doing that?

851
MR. WIEBE: My earliest record of that is 1997.

852
MR. RUBY: Thank you. And Mr. Wiebe, do you adopt the CEA evidence that's
been filed in this proceeding with one important exception, the numeric data that's been put
in for provinces other than Manitoba?

853
MR. WIEBE: Yes, with one small clarification.

854
MR. RUBY: Sure. Why don't we do that right now, then. Which clarification?

855
MR. WIEBE: On page 14.

856
MR. RUBY: Sorry, page 14. This is of the CEA evidence?

857
MR. WIEBE: CEA evidence, paragraph 36, item A.

858
MR. RUBY: Yes.

859
MR. WIEBE: The words, "during the life of the pole," I would
write, "during the amortization period
of the pole."

860
MR. RUBY: Thank you. Now, again, let's, if we can, get one more
clarification out of the way. Mr.
Wiebe, do you have the MTS answers to interrogatories with you?

861
MR. WIEBE: Yes, I do.

862
MR. RUBY: Can you take a look at the answer given by MTS to Energy Probe
Interrogatory No. 1.

863
MR. WIEBE: I have it.

864
MR. RUBY: Is it accurate?

865
MR. WIEBE: No, it isn't.

866
MR. RUBY: Can you tell the Board why?

867
MR. WIEBE: MTS Allstream's response says that:

868
"... incremental capital costs that would result from MTS Allstream's attachment to
Manitoba Hydro's
joint-use poles --" sorry.

869

It's the second paragraph in that answer:

870

"... incremental capital costs that result from MTS Allstream's attachment to Manitoba Hydro's joint-use poles are paid by MTS Allstream directly to hydro at the time of construction. These make-ready costs normally involve payment for an extra 5 feet of wood pole required to provide a 2-foot communications space plus a separation space of 3 feet."

871

I would like to say that incremental costs are paid only on poles larger than 40 feet, and not, as this suggests, on all poles.

872

MR. RUBY: All right. And if I can take you to one more thing in the CEA evidence. Page 13 of the CEA evidence, there's heading titled: "Pole ownership versus tenancy."

873

MR. WIEBE: Yes.

874

MR. RUBY: I don't want to take the Board's time taking you through it, but there are a number of items listed there. Do those items all accurately reflect your experience?

875

MR. WIEBE: Yes, they do.

876

MR. RUBY: Okay. Mr. Wiebe, I'm going to take you to some specific issues that have been a little bit in dispute in the evidence in the last couple of days. In your experience, are there typically two attachments per joint-use pole?

877

MR. WIEBE: My experience says that there are not typically two attachments per joint-use pole.

878

MR. RUBY: How many do you say there are?

879

MR. WIEBE: They range widely, but the averages, for example, in Manitoba, is 1.47 attachments per joint-use pole. And in dialogue with my colleagues over the years, I've known that even in Ontario this number is, the average number of attachments per pole is much lower than two. I recall one LDC at 1.37.

880

MR. RUBY: If you -- maybe this will help you. If you look at the CEA's evidence, now, this is at -- excuse me, answers to interrogatory. There's a full volume under tab B, and the Board's already been taken to this. There's a rather lengthy spreadsheet. Do you

see it there?

881

MR. WIEBE: Yes.

882

MR. RUBY: And under C it deals with utility poles, and as you flip the pages it has one utility after another across the country.

883

MR. WIEBE: Yes.

884

MR. RUBY: Is there any pattern you can detect in the number of attachments?

885

MR. WIEBE: No, there's no pattern. Even if you look at Ontario only, you don't see a pattern.

886

MR. RUBY: Now, Mr. Ford has said in his evidence, and this is at page 2 of his evidence, but he's also said it again just a few minutes ago, that you can fit, and some of the other earlier panel has said this as well, that you can fit three attachments in the -- some people called it two feet, some people called it 600 millimetre, but in that 600-millimetre space. Is that correct?

887

MR. WIEBE: At the pole, it might be. In practice, it's unlikely.

888

MR. RUBY: Can you explain why?

889

MR. WIEBE: The 600 millimetres is considered to be attachment space, but what one of the things that are often neglected is the communications sag that also has to be accounted for in the pole. And this sag has a direct impact on the amount of space used, and it's unlikely that three attachments can sag within the 600 millimetres. In fact, if you attach at the bottom of the 600 millimetre space, you have to sag outside that 600 millimetres.

890

MR. RUBY: Thank you.

891

In fact, in a 600-millimetre space, if you take into account the sag you just discussed, can you typically fit two communications attachments in that 600-millimetre space?

892

MR. WIEBE: Typically, no. You can in rare circumstances, but typically you would require more than 600 millimetres to attach two communications conductors.

893

MR. RUBY: So when we all drive around and see two attachments on a pole, how is that happening?

894

MR. WIEBE: They're using more than 600 millimetres on the pole.

895

MR. RUBY: Now, in your experience, have the types of communications facilities mounted on poles changed over the last ten years?

896

MR. WIEBE: The types of attachments have changed. The fiber in the last ten years has been a new player. There's also been attachments, battery banks, to support the fiber as well as the equipment that is attached, has been added in recent memory. In addition to the co-ax and the copper wire that have been traditionally been used.

897

MR. RUBY: And the battery banks you just mentioned, how big do they get in your experience?

898

MR. WIEBE: That's been an issue. In Manitoba, for example, we have finally agreed between the user -- the communications users and ourselves that they will not install a box larger than 600-by-600-by 300, in millimetres. Their initial hope was to increase that to use a 900-by-900-by-600 box.

899

MR. RUBY: Okay. And we were just talking about the communications space, and you said it's not necessarily 600 millimetres. Where do you measure it from? And feel free, if you want, to draw a diagram.

900

MR. WIEBE: I will try to explain myself.

901

If you assume that the conductor, the bottom communications conductor, provides exactly the minimum ground clearance required, then the pole must be enlarged, made higher, by that amount. The 600-millimetre space can be -- one communications conductor can often be accommodated within a 600-millimetre space. However, we know that two, and I hear in Ontario three users of that are required, and traditionally and by convention they have used the separation of 1 foot.

902

If you use that as a 600-millimetre space at the pole, then you have to account for the communications sag that is evident here. And when you attach even two, we have sag charts that Manitoba Hydro uses from its telecom partners, licensees, tenants, whatever you want to call them, where they show this sag can range from 400 millimetres to 1,400 millimetres. Well, 1,400 millimetres for a

40-metre span is substantially more than 600 millimetres. Now, that may be also very rare, that 1,400 millimetre case, but there are many cases, many, many cases where this sag is greater than the 600 millimetres be accommodated in this space. And once the 600 millimetres has been used up, you have to provide more space to permit the communications -- the other communications users to be in that space.

903

MR. RUBY: Thank you. Mr. Wiebe, is there a minimum amount of space that has to be in place between a communications wire and power cable?

904

MR. ENGELHART: Mr. Chairman, Mr. Ruby's questions initially were addressing issues that I think had arisen in the CCTA panel and which I think could fairly be said to be issues in the proceeding which Mr. Wiebe could usefully inform the Board on. I think we're now getting into material that could have been included in the CEA's evidence, could have been the subject of interrogatory processes, which we could have consulted with our engineers on in preparation for this proceeding. And instead it's being introduced in-chief here, not in response to anything that was said previously but as new evidence. Mr. Wiebe will be leaving today. We'll have no opportunity to consult with our engineers about it. So it seems to me to be a bit out of process, and I would ask your guidance on it.

905

MR. KAISER: Thank you, Mr. Engelhart. Do you have any response, Mr. Ruby?

906

MR. RUBY: I do. First of all, the CSA standard, which is the standard that governs everything Mr. Wiebe is talking about, is referred to in the materials. As Mr. Lyle took Mr. -- the former panel to the chapter, essentially, in the CEA evidence that dealt with all the technical aspects of joint-use, pole heights, the importance of sag. I think Mr. Lyle even took the witnesses to the particular sentences that referred to it. I'm quite content, with one other point that I think does address something the previous panel says, to move on. I've completed my questions on this particular issue, in any event.

907

MR. KAISER: Mr. Engelhart, we did hear quite a bit about sag. I know you weren't here but this is not the first time we've heard about this concept. Proceed, Mr. Ruby.

908

MR. RUBY: Thank you, sir.

909

Going back to the MTS materials, answers to interrogatories, MTS answered an Interrogatory No. 4 from the CEA. Do you have that there, Mr. Wiebe?

910

MR. WIEBE: Yes.

911

MR. RUBY: And I don't want to put words in MTS's mouth, but one of the points being made here is there is no difference in installation costs between rural and urban areas. And I'd ask you for your experience on that question.

912

MR. WIEBE: That is not true of Manitoba. There are substantial differences between rural and urban. In fact, there are substantial differences in rural, depending on what rural area you consider. For example, if we consider the rural areas north of the 53rd parallel where rock and muskeg are the order of the day, those installation costs are substantially higher than in southwestern Manitoba where sand is the foundation material that we have to deal with.

913

In urban areas, of course, you have to deal with the extra added difficulty of congestion, be it other persons above ground, traffic signals, the -- just working around traffic, costs a fair bit of money in the installation process. So obviously the difference between rural and urban -- between rural and various other areas of rural, between urban and various other areas of urban, is dramatic, and it can't be stated there is no difference in costs of installation.

914

MR. RUBY: Mr. Wiebe, earlier, Mr. Glist said that you can sometimes put in -- or that you can put in a communications wire on a joint-use pole without affecting how much primary -- or ground clearance for the primary electricity conductor is required; is that correct?

915

MR. WIEBE: No, that's not correct.

916

MR. RUBY: Can you explain why.

917

MR. WIEBE: Probably my best explanation would be on the board again. Except for over walkways and driveways, the CSA standard has the same ground clearance requirement for electric or communications conductors. I'm drawing an imaginary line between the two attachment points on adjacent poles. The CSA standard requires an electric utility's wires, at maximum sag, to be at least 75 millimetres above this

imaginary line. It spans
for an electric utility less than 75 metres long, which is most often the case. Therefore,
clearance which without a communications attachment would have the same ground
communications requirement as the communications company, when, as soon as the
meet a new barrier, a company comes on board on the poles, the electric utility now must
total, more than you new lower clearance. And that lower clearance is substantially, in
experience, install a would have if you had electric only. So you could never, in my
was designed for communications conductor on a pole that -- on a set of poles that
electric use only.

918

MR. RUBY: Mr. Ford has told us both in oral testimony and in his report
that an assumption of 1 foot
happens to a per communications user is reasonable. Can I ask you, please, what
communications cable when you attach equipment, other equipment, to it?

919

MR. WIEBE: If you attach other equipment to it, be it
overlashing, be it service equipment, be it
that increases the sag of whatever they want to attach, and they do attach to their strand,
the conductor that was originally there.

920

MR. RUBY: In your experience, is a 1-foot allotment for a cable company
reasonable?

921

MR. WIEBE: It is not typical and it is not reasonable.

922

MR. RUBY: Mr. Wiebe, I'd like to ask you about the power space. I'd
indicated to the Board, in an
earlier question, that I would have you give some evidence on that since
I asked a number of questions of the previous panel. Mr. Ford says the -- or at
least assumes that
power space is 11.5 feet high. What's your experience?

923

MR. WIEBE: My experience is that it can vary. It can vary
widely. It depends on the span length. It
there. The power depends on our conductors. It depends on what equipment we have
space that the electric utility needs can be as little -- and I've
seen as little as 4 feet, to as
much as, in some cases, 15 feet.

924

MR. RUBY: And when at Manitoba Hydro you have to make an assumption about
how much power
space is going to be used on a -- to the extent there is a typical pole,
what figure do you
use?

925
MR. WIEBE: We use 3. -- let me just make sure I'm accurate here.
I'd have to get that back to you. I
don't have that number here. But it's -- we --

926
MR. RUBY: That's fine, Mr. Wiebe. We can come back to it. We'll come back
to it, then, at the end.

927
At page 3 of Mr. Ford's report, do you have it there?

928
MR. WIEBE: Yes.

929
MR. RUBY: In the first full paragraph, he has a paragraph about Manitoba
that I asked him about, and
he told me if Manitoba said it was wrong, he'd admit that it was wrong.
So can you take a
look at that paragraph, and tell me if it correctly states the situation
in Manitoba?

930
MR. WIEBE: It doesn't correctly state the situation in Manitoba.
In Manitoba, MTS Allstream owns
about 2,900 joint-use poles. Manitoba Hydro doesn't own all of them.
It doesn't grant a
lease to the incumbent for the entire space. It only has tenants
where both the telecom
and the cable TV partners have an agreement with Manitoba Hydro
and/or MTS.

931
MR. RUBY: If we can return, because it is my last couple of questions, if
you can take a look for me
and tell me what the power space figure that Manitoba Hydro uses, it
would be
appreciated. And if you can't do, perhaps with the Board's indulgence, we
can provide
that by way of undertaking. It's just a measurement.

932
MR. KAISER: Is that acceptable to you, Mr. Brett and Mr.
Engelhart? You may not have a chance to
cross-examine on that.

933
MR. RUBY: I'm happy to tell you what Mr. Wiebe told me earlier, if
somebody's content to put it back
to him. It's not the usual way it's done, but if it saves time.

934
MR. WIEBE: I have the document in the back and I didn't provide
it.

935
MR. KAISER: Why don't you tell him and see if he can agree with
you.

936
MR. RUBY: Well, Mr. Wiebe mentioned it was 10 feet to me, earlier.

MR. KAISER: Is that right?

937

MR. WIEBE: 3.3 was the number that I was going to use. That's
very close to 10 feet. 3.3 metres was
the number I was thinking of.

938

MR. RUBY: Thank you.

939

And through your work with the Canadian Electricity Association joint-use group,
have you developed a
view whether a 10-foot measurement for the power space or 11-feet, as an
assumption, have you
developed a view as to whether one or the other is more appropriate, on a national
basis?

940

MR. WIEBE: On a national basis, my view is that the measurement
that Manitoba uses is more typical.
It is typically a smaller figure than the 11.5.

941

MR. RUBY: And what about for Ontario?

942

MR. WIEBE: I would see no reason, other than that's Milton
Hydro's evidence, I would see no reason
for the distribution to be any different in Ontario than it is in
the rest of the country.

943

MR. RUBY: Thank you.

944

Mr. Chair, those are my questions on direct.

945

MR. KAISER: Thank you, Mr. Ruby.

946

CROSS-EXAMINATION BY MR. ENGELHART:

947

MR. ENGELHART: Good afternoon, Mr. Wiebe.

948

MR. WIEBE: Good afternoon.

949

MR. ENGELHART: Mr. Wiebe, I wonder if you could have a look at
paragraph 19 and 20 of
schedule 3 of your evidence. So that was schedule 3, paragraph 19
and 20, which
is on page 6, and I'll just read it to you:

950

"The cost of poles varies considerably. As a result, the rate calculation
methodology proposed in the Ford
report is too simplistic to efficiently and equitably reflect an appropriate
approach to setting power pole

951

Volume 2 Transcript - RP-2003-0249.txt
joint-use rates. Electricity..."

952
And I'm reading on in paragraph 20.

953
"Electricity distributors do not pay the same amount for raw power poles. The price varies by location, type of wood, chemical treatment, height, pole class, distance to transport, and the volume of poles purchased by the distributor. The cost of installation also varies as described below."

954
And when he was on the stand, Mr. Ford explained how it was that this Board could practically get over those problems. And I'd like to direct you to evidence of the EDA in this proceeding, where they filed a model agreement. And schedule E to that model agreement is "Financials: Methodology for Calculation of Annual Rate." Do you have that document with you?

955
MR. WIEBE: No, I don't.

956
MR. ENGELHART: Well, I'll refer to it for you, and if you have any trouble understanding what I'm saying, please let me know and I can bring my copy over for you to have a look.

957
MR. RUBY: Mr. Engelhart, with the Board's permission, I think it's only fair, if you're going to put something to the witness, that you put it in front of him.

958
MR. KAISER: Mr. Lyle, do we have a copy for the witness?

959
MR. LYLE: I think Mr. Brett's providing a copy.

960
MR. KAISER: Thank you.

961
MR. ENGELHART: So this is a schedule to the EDA's evidence, and if I could direct you to page 6 of schedule E. And if I could direct you under the heading "Cost of Capital" to the fifth paragraph, it says:

962
"For an electricity distribution utility that is subject to the regulations of Ontario Energy Board, and its prescribed uniform system of accounts, USOA, the cost of poles and fixtures is collected in its asset accounts. Because we are looking for the net book value, or net-embedded cost, we subtract the accumulated amortization or depreciation from this number. The book value of poles and fixtures minus the accumulated depreciation provides the net book value of poles and fixtures."

963

And the EDA goes on to say at the bottom of that page that, because there's poles there, and fixtures, you can take 85 percent of the cost or value in order to come up with an approximation for the pole costs.

964

Would you agree that that is a practical solution which gets around the difficulties that you identified in paragraph 19 and 20 of your evidence?

965

MR. WIEBE: It can address what's existing. It can't address what's being planned to be installed.

966

MR. ENGELHART: But would you agree with me that both sides of this dispute, the electrical distributors and the cable association, have proposed using embedded cost data, and, therefore, what's existing is what you need?

967

MR. RUBY: I don't mean to interrupt Mr. Engelhart, but the CEA hasn't made any proposals about what data to use at all for costing.

968

MR. ENGELHART: Fair enough.

969

MR. RUBY: As we've advised the Board, we've specifically undertaken not to do that.

970

MR. ENGELHART: Fair enough, Mr. Wiebe --

971

MS. FRIEDMAN: I'm sorry, I have to speak on behalf of the EDA as well. The EDA put that agreement as a sample and as a model agreement that had been -- was in the process of negotiation between a MEARIE Working Group and the CCTA. So, to say that the EDA has signed off on it, or has agreed to anything, would be incorrect. It is a sample of what parties can do in negotiations to get around practical problems.

972

MR. KAISER: I don't think Mr. Engelhart's suggesting that. He's suggesting that you relied on embedded cost in your evidence.

973

MS. FRIEDMAN: That agreement does, that model agreement does. The EDA has said nothing about what this Board ought to do.

974

MR. ENGELHART: Well, Mr. Wiebe, if this Board was content to use embedded cost data as the

the basis for calculating an appropriate pole rate, would you agree that the methodology that I've described, using the USOA, would be a practical solution to that problem?

975
MR. WIEBE: I'm not familiar with the USOA accounts, but I can say that an embedded-cost methodology can be used to overcome some of the installation costs, the variety of installation costs. But I would also say that you need to be careful that this is applicable to all. The embedded costs of one utility are -- as was already described, could vary dramatically from another.

976
MR. ENGELHART: But the "U" in uniform system of accounts means that they're uniform. So everyone should have an account like this, shouldn't they?

977
MR. WIEBE: Uniform means uniform accounts. It doesn't mean uniform costs of installation.

978
MR. ENGELHART: Right, but everyone could do this calculation if it kept the uniform system of accounts as they're supposed to.

979
MR. WIEBE: I'm not an expert on your accounts weaning.

980
MR. ENGELHART: Now, if I could ask you also to take a look at page 22 of your evidence, not the schedule 3 this time but the main evidence. Now you say in paragraph 51:

981
"Clearly the legal authority of a regulator to set joint-use rates, if it forebears from doing so, does not preclude successful negotiations between the parties. For example, British Columbia, Nova Scotia, Quebec and Newfoundland all have express legislation dealing with access to power poles, but in these four jurisdictions currently, rates are set entirely by agreement and without regulatory intervention."

982
But in the preceding paragraph, paragraph 50, you said that the Nova Scotia board had set a rate. So I think you would agree with me that in Nova Scotia it's not set entirely by agreement and without regulatory intervention, wouldn't you?

983
MR. WIEBE: I believe that there are parts of the Nova Scotia joint-use community that do not use the regulated rates. They have other agreements.

984

the regulatory authority and, at least for the case that we know about which is described in the previous paragraph, that someone's relied on regulatory intervention; is that right?

985

MR. WIEBE: Yes.

986

MR. ENGELHART: And with respect to B.C., you said, if I could direct

--

987

MR. WIEBE: D.C? Could you please help me what you mean by D.C.?

988

MR. ENGELHART: Sorry, British Columbia.

989

MR. WIEBE: Oh, I see. B.C.

990

MR. ENGELHART: If I could direct you to paragraph 31 of your evidence. And this you say:

991

"Since at least 1971, for their joint-use poles, B.C. Hydro has owned 60 percent of each pole and Telus," the Telus predecessor was B.C. Tel, "has owned 40 percent of each pole. Maintenance expenses for these joint-use poles are also paid in a 60/40 ratio. Interestingly, for such poles cable distributors can seek permission from either Telus or B.C. Hydro to attach to a joint-use pole."

992

So when you say in your evidence that even though there's legislation in B.C., they haven't had to use it, that's not quite right, isn't it? Isn't the situation in B.C. that the cable company can simply access the same pole by seeking permission from Telus and having the CRTC protection?

993

MR. WIEBE: If it chooses to go to Telus, their agreement would override -- would be used in place of the B.C. Hydro one.

994

MR. ENGELHART: Right. And for Newfoundland, which you also mentioned, you say that they were able to work something out there. Do you know what rate they're paying in Newfoundland?

995

MR. WIEBE: Not -- I'm not familiar with the current rate.

996

MR. ENGELHART: My company, Rogers Communications, or Rogers Cable, operates in Newfoundland, and it is, as you say in your evidence, a negotiated rate. Would it

surprise you that that rate is a lot less than the \$40 that the EDA has requested?

997

MR. WIEBE: I'm not aware of what the rate is.

998

MR. ENGELHART: And what about the Quebec situation? Are you aware what the rate is there?

999

MR. WIEBE: No, I am not aware of what the rates are. They're under negotiation. I'm aware of that.

1000

MR. ENGELHART: So when you say that all of these places were able to work something out without invoking the regulator, what does that prove? We've got a situation here in Ontario where one side wants to pay \$15, the other side has asked for \$40. Is it that useful to say, well, in another jurisdiction where both sides want around \$15 dollars, there's no problem. Isn't there a problem if there's a huge gap in the number and the two sides just can't narrow that gap?

1001

MR. WIEBE: Obviously, if the two sides can't narrow the gap, there's a problem. But the experience has been, to date, that there has always been a mechanism to come to some agreement.

1002

MR. ENGELHART: I wonder if you could take a look at paragraph 21 of your evidence. Again, that's the main evidence, not the schedule. And you say in the last sentence:

1003

"Alternatively, cable distributors can use telephone poles at rates and under conditions regulated by the Canadian Radio Television and Telecommunications Commission (CRTC)."

1004

So do I take it the point of your sentence there to be, well, if you don't like the rate that the electric distributors are charging you, you can always use the telephone poles? Is that what you're trying to say?

1005

MR. WIEBE: Telephone poles are always an alternative.

1006

MR. ENGELHART: Are they really? I mean, where you have a joint-use pole between the electric distributor and the phone company, isn't it much more common that there's one set of pole lines sometimes owned by the phone company and sometimes owned by the electrical distributor? It's not that common, is it, for there to be two sets of pole lines, one owned by each?

1007
MR. WIEBE: It's more common to have one set of poles, but both pole lines do exist in places.

1008
MR. ENGELHART: So in the common situation where there's just one set of poles, and the cable operator wants to go from point A to point B, and the poles he's looking at are electrical distributor poles, the fact that there's telephone poles somewhere else won't do him much good, will it?

1009
MR. WIEBE: Not in that location.

1010
MR. ENGELHART: And I wonder if I could ask you -- I'd like to ask you a few questions about some of the material on the height of the poles. So let's have a look, if we can, at page 7 of your evidence, at paragraph 21. Sorry, that's page 7 of schedule 3. I'm sorry. Schedule 3 of your evidence.

1011
So you say in paragraph 21 of schedule 3:

1012
"Power poles are not typically 40 feet in height as claimed by Mr. Ford. In fact, there are more 35-foot power poles than 40-foot power poles. From a sample of 18 electricity distributors, it is clear that there are a wide variety of power pole heights in Canada."

1013
Would you agree with me, Mr. Wiebe, that what really counts is the average height of those poles?

1014
MR. WIEBE: No, I would not agree with you on that.

1015
MR. ENGELHART: Well, Mr. Wiebe, remember I talked before about the uniform system of accounts.

1016
MR. WIEBE: Yes.

1017
MR. ENGELHART: And I talked to you about account number 1830. Would you agree with me that all the poles, big, small, skinny, fat, they all go into that same account?

1018
MR. WIEBE: I have to apologize, I am not familiar with the uniform system of accountings. I don't know what goes in.

1019

MR. ENGELHART: Well, if you would accept for a moment that there is such a thing as an account that all the poles go into, all the capital accounts for all the poles, and as a matter of fact there's another pole that all of the maintenance -- another account that all the maintenance costs go into, so if all the pole costs go in --

1020

MR. WIEBE: Okay.

1021

MR. ENGELHART: -- and they all get reflected in the rate, and the formula is based on the average height of those poles, don't you think that works?

1022

MR. WIEBE: The formula is based on the average height of those poles. I don't believe that works, no.

1023

MR. ENGELHART: How come?

1024

MR. WIEBE: Because the average height is not what's at play, when you do a specific installation, a new installation.

1025

MR. ENGELHART: But if each one of those installations, if the cost for each one of those installations makes it into the account, isn't it fair to do a formula based on the average height?

1026

MR. WIEBE: I believe you would need to know the number of attachments and the size of the communications space on all those poles to make that worthwhile.

1027

MR. ENGELHART: Would you agree with me that the average height of a power pole in Canada is, indeed, 40 feet, or very close to it?

1028

MR. WIEBE: I would agree with you that the average height of a joint-use pole is 40 feet, or very close to it.

1029

MR. ENGELHART: Okay. Now, in your discussion with Mr. Ruby, you said that there was a discussion about the number of attachments. And I wonder if we could go to paragraph 22 of the CEA evidence. And you say:

1030

"Central to his conclusion, Mr. Ford assumed that every joint-use pole has two communications attachments. This assumption is not supported by the aggregate data of 18 Canadian distributors."

And you said to Mr. Ruby today that the average is much lower than two; is that right?

1031

MR. WIEBE: Yes.

1032

interrogatory 7 to the CEA. And in particular -- my mistake. We're having a look at appendix B of the CEA evidence. Oh, sorry, appendix B of the CEA interrogatory responses.

1033

So your interrogatory responses, and appendix B to those responses, and I've got a document called "CEA Distribution Pole Attachments Statistics." Do you have that document?

1034

MR. WIEBE: I don't have appendix B with me.

1035

Thank you. MR. ENGELHART: Mr. Brett to the rescue again, or Ms. Assheton-Smith?

1036

Now, section C -- I'll let you -- oh, you got the page?

1037

MR. WIEBE: Yes.

1038

attachments on every joint-use pole across Canada, doesn't it?

1039

MR. WIEBE: For 18 utilities, I believe.

1040

one attachment; is that right?

1041

MR. WIEBE: Yes.

1042

that it was very unlikely that you could have three attachments, but here we see 122,625 that have three attachments. We've got 40,997 with four attachments. We even have 7,304 with seven or more attachments. So, given that, why do you think it's highly unlikely that we could have three or more attachments?

1043

than two attachments would fit in the 600-millimetre space. Not that they couldn't fit on the pole.

1044

1045
MR. ENGELHART: So these are just really slack hydro-electric distributors that --

1046
MR. WIEBE: No, they probably provided more pole than the 600 millimetres that you're paying for, or might be paying for.

1047
MR. ENGELHART: I see. Now, you don't have a lot of competition in Manitoba so you don't have too many of these situations where there's three and four attachers per pole.

1048
MR. WIEBE: No, we don't in Manitoba.

1049
MR. ENGELHART: But let's take a look at the CCTA interrogatory responses. Oh, before we leave that chart, which is a good idea, would you agree with me that if I took the average, if I multiply 791,691 times 1, and if I went all the way down the line, 7,304 times 7, and then I divided by the total, would you agree, subject to check, that I'd get a number of 1.83?

1050
MR. WIEBE: I haven't done the calculation, but subject to check, there will be a number coming out of that.

1051
MR. ENGELHART: And if the number was 1.83, you would agree with me that that's not substantially less than 2, wouldn't you?

1052
MR. WIEBE: I would agree that it is substantial. It has a significant a impact.

1053
MR. ENGELHART: So you would agree with me that, other than your subjective view of the number of attachments, this evidence here in this appendix is the best evidence this Board has on the number of attachments per pole?

1054
MR. WIEBE: Across Canada?

1055
MR. ENGELHART: Yes.

1056
MR. WIEBE: Across Canada, yes.

1057
MR. ENGELHART: Then let's take a look, if we can, at some pictures that the CCTA provided in interrogatory response to CEA question 10.

1058
Now, the first picture that I'm looking at is a Hamilton Hydro pole. It's got one Hamilton firewire wire, a Cogeco cable TV wire, two Bell attachments, and a Mountain Cable TV, all in the communications space. Do you see that?

1059
MR. WIEBE: My picture is not legible, but -- I would also say the words say that. In communications space, there are four attachments.

1060
MR. ENGELHART: We'll get you a better picture. I think Mr. Ruby's office was a bit cheap in the photocopying.

1061
MR. RUBY: No, I think what happened is Mr. Brett faxed around a 111-page answers to interrogatories, and never sent it in any hard-copy form.

1062
MR. ENGELHART: All right. I'll withdraw my comment about your photocopying.

1063
MR. RUBY: Thank you.

1064
MR. ENGELHART: Does that look like four wires in the communications space to you?

1065
MR. WIEBE: There are four -- I can discern four communications conductors, and it says "in communications space." I would suggest to you that they're not within 600 millimetres.

1066
MR. ENGELHART: It looks like more to you?

1067
MR. WIEBE: Yes.

1068
MR. ENGELHART: How much more?

1069
MR. WIEBE: That's hard to estimate, but the transformer above the pole is larger than 600 millimetres, typically. And it looks to me like the communications conductors installed on that pole use more room than that transformer does.

1070
MR. ENGELHART: You've got a keen eye to be able to gauge that. Let's take a look at the next one we've got, which is Grimsby Hydro pole, and maybe we can get you a cleaner copy.

1071
MS. FRIEDMAN: Excuse me, sorry, Mr. Engelhart. If I can ask the Board, Mr. Weber, the President of Grimsby, is going to be here tomorrow. He indicated to me that he's got a concern that that's not a Grimsby Hydro pole, that it's, in fact -- that it might be a Bell pole, because he can't find that pole on his system and doesn't recognize it as one of his poles. I'm just wondering, Mr. Engelhart, if it matters to you, if you can turn to a different picture.

1072
MR. ENGELHART: Well, I think as long as it's a communications space, we'll just call it --

1073
MS. FRIEDMAN: Assume, okay.

1074
MR. ENGELHART: -- "unknown pole," "the communications space of the unknown pole."

1075
And that shows an unknown hydro fiber, Cogeco Cable and Bell Canada. So is that an example where you've got three attachments in one communications space? Well, sorry, Bell has three attachments, and a fourth attachment below the communications space, so they're actually saying you've got six communications attachments, five of which are within the communications space. Do you see that?

1076
MR. WIEBE: It's very difficult to see, even in the good picture it's very difficult to see. One of the reasons I'm saying that is because what I cannot tell is whether they've used both sides of the pole or not.

1077
MR. ENGELHART: Now, I wonder if we could have a look at paragraph 9 of your evidence. You say there, in the second sentence:

1078
"The CEA submits that the Board should take a principled approach to the proceeding, implementing its legislative objectives and imposing as little as possible on the free negotiation of creative joint-use negotiations."

1079
Would you agree with me that, if the parties have used their creative joint-use negotiations for years and have not been able to come up with a rate, it's appropriate for the Board to step in?

1080
MR. WIEBE: I wouldn't have a comment on that. My experience is across Canada we can come up with negotiated -- negotiations, and we can come up with agreements.

There are a

number of ways to do that.

1081

Ruby indicated, you are responsible for all joint-use poles, both from a business and engineering perspective; is that correct?

1082

MR. WIEBE: That's correct.

1083

with MTS MR. ENGELHART: And has Manitoba Hydro been involved in a negotiation Communications regarding the rental rate for those joint-use poles?

1084

MR. WIEBE: Yes.

1085

place? MR. ENGELHART: And were you involved in the arbitration that took

1086

MR. WIEBE: I was involved in the preparation of our argument.

1087

arguments advanced by Manitoba Hydro in that proceeding; is that correct?

1088

MR. WIEBE: Yes.

1089

Hydro argued that, although CRTC decision 99-13 was ultimately dismissed by the Supreme Court of Canada on jurisdictional grounds, the rate-setting formula is sound and is being used other jurisdictions across Canada.

1090

MR. RUBY: Mr. Wiebe, before you answer that, Panel, I have an objection to that question, and it stemmed from the fact from information conveyed to me by counsel for Manitoba Hydro, who this morning advised me that that arbitration proceeding is a confidential arbitration in Manitoba, and that the contents of what went on were to remain private. Now, in a way, it's not my objection to raise, but I do so on behalf of Manitoba Hydro, since it's their witness. And I'm not sure where Mr. Engelhart wants to go with this, but --

1091

MR. KAISER: Well, if it's confidential, how does Mr. Engelhart have the argument?

1092

MR. RUBY: I don't know.

1093

MR. WIEBE: If he could share it with us, we'd certainly pursue it.

1094

MR. ENGELHART: I've got the arbitrator's decision, but if Mr. Wiebe wants to -- and if Mr. Ruby agrees, he could respond to that question in confidence to the Board, I'd be satisfied with that.

1095

MR. RUBY: I'd be content --

1096

MR. KAISER: Is that acceptable?

1097

MR. RUBY: I'd be content for him to respond to that question, because it --

1098

MR. KAISER: I think we would like to have an answer to the question, in confidence or otherwise.

1099

MR. RUBY: I don't think there would be any objection or I'd have no objection to providing that information in confidence. Where it becomes more of a problem, and I'm anticipating my friend a little bit, is, if he asks about either what the other party to that proceeding said or submitted to the arbitrator, or what happened in the arbitration proceeding itself, then it's a bit out of my hands.

1100

MR. ENGELHART: No, I'm happy with that question, Mr. Chairman.

1101

MR. KAISER: And the question, could you just rephrase the question, Mr. Engelhart?

1102

MR. ENGELHART: Certainly. In that proceeding, did Manitoba Hydro argue that although CRTC decision 99-13 was ultimately dismissed by the Supreme Court of Canada on jurisdictional grounds, the rate-setting formula is sound and is being used in other jurisdictions across Canada?

1103

MR. KAISER: Thank you. And I take it that you wish to have that answered in confidence?

1104

MR. RUBY: Based on the information provided to me by Manitoba Hydro's counsel, I'm passing on their request.

1105
MR. KAISER: No, I understand. And since he's not here, we'll
respect that, and I think Mr. Engelhart
has no objection to that procedure.

1106
MR. LYLE: So perhaps, Mr. Chair, should it be by way of undertaking, the
response?

1107
MR. KAISER: Yes. Certainly.

1108
MR. LYLE: We'll mark that as Undertaking F.2.5.

1109
MR. KAISER: Can I just ask you, Mr. Wiebe, do you know the answer
to the question, without gives it
on the record? Do you even know if answer?

1110
MR. WIEBE: Yes, I know the answer to that question.

1111
MR. KAISER: All right. Fine. Thank you.

1112
IN THE ARBITRATION UNDERTAKING NO. F.2.5: TO ANSWER IN CONFIDENCE WHETHER
CASE IN MANITOBA BETWEEN MTS ALLSTREAM AND
MANITOBA HYDRO, DID MANITOBA HYDRO ARGUE THAT
ALTHOUGH CRTC DECISION 99-13 WAS ULTIMATELY
DISMISSED BY THE SUPREME COURT OF CANADA ON
JURISDICTIONAL GROUNDS, THE RATE-SETTING FORMULA IS
SOUND AND IS BEING USED IN OTHER JURISDICTIONS
ACROSS CANADA

1113
MR. KAISER: You can whisper it to Mr. Lyle on your way to
Chicago.

1114
MR. WIEBE: Is he coming with me?

1115
MS. CROWE: I'd just note that Mr. Ruby raised the concern that
the other party to that arbitration might
have a problem with, I think, it was the decision being quoted. MTS
Allstream was the
other party to that arbitration and doesn't have a concern with the
arbitrator's decision
being --

1116
MR. KAISER: Is it correct that the decision is a confidential
one?

1117
MS. CROWE: My understanding was that some of the submissions
made during the arbitration,
confidentiality was claimed in relation to those. But no other
agreement was made

was done under the Manitoba Arbitration Act, and there were no additional requirements under that act that parties keep the final decision confidential. I believe it was claims with respect to submissions made during the arbitration proceeding.

1118
MR. RUBY: I can only tell the Board what I was told, which is that the agreement was that the arbitration would be held privately and in confidence.

1119
MR. KAISER: Well, until we hear further on that we'll just deal with it as we have it. I think if it's satisfactory for Mr. Engelhart's purposes, it's satisfactory for our purposes.

1120
MR. ENGELHART: Those are my questions, thank you very much, Mr. Chairman.

1121
MR. KAISER: Thank you. Do we have any other parties that wish to
--

1122
MR. DINGWALL: I have a couple of brief questions, sir.

1123
MR. KAISER: Go ahead, please.

1124
CROSS-EXAMINATION BY MR. DINGWALL:

1125
MR. DINGWALL: Mr. Wiebe, at page 14 of your evidence, you discuss a number of costs related to pole ownership.

1126
MR. WIEBE: Yes.

1127
MR. DINGWALL: I note that the first of these, costs is a risk of stranded assets.

1128
MR. WIEBE: Yes.

1129
MR. DINGWALL: I'm wondering if you could clarify that for me. I'm not aware of how a pole that's built, how its costs might not be recovered.

1130
MR. WIEBE: When a pole is installed for joint use, it is an extra-height, extra-strength pole, over and above what the electricity company needs. If the pole is not utilized and paid for over the amortization period that is agreed upon, then you have extra height and extra strength

with the pole. that you don't need. And in that case, there are stranded assets

1131
shareholder or MR. DINGWALL: Now, in Manitoba are these assets stranded with the
with the
ratepayer?

1132
MR. WIEBE: Could you clarify your question?

1133
joint-pole use MR. DINGWALL: Are your -- is the setting of your rates for
conditional on you
ratepayer pay actually finding people to pay for the incremental costs or does the
for the cost of the assets that you built?

1134
for that which MR. WIEBE: The ratepayer -- Manitoba Hydro's ratepayer only pays
Manitoba Hydro
pole is either uses. If a communications utility wants to attach to a pole and a
made-ready, or when it's first installed in the case of a new line,
it's built stronger and
higher, at the request of the communications company.

1135
And that rate is -- built into the rate is an amortization period over which that
extra strength and extra
height is paid back. And if that communications company removes its attachment
prior to that
amortization period, you will lose the amount of money that you had counted on.

1136
case, the ratepayer or the MR. DINGWALL: And which "you" would be doing the losing in that
shareholder?

1137
shareholder. MR. WIEBE: In Manitoba Hydro's case, the ratepayer is a

1138
joint asset flow back through MR. DINGWALL: So would the loss, then, of the revenue from the
rates or through a reduced return?

1139
be recovered from the ratepayer. MR. WIEBE: The stranded asset would have to be -- would have to

1140
understanding that the Ontario MR. DINGWALL: So, in context of the Ontario utilities, is it your
utilities are proposing some mechanism that might lead their
shareholders to undertake some of the financial risk associated with building poles
on spec?

1141
currently use poles that can accommodate MR. WIEBE: It is my understanding that the Ontario utilities

1142
MR. DINGWALL: And is it your understanding that, in the event that
those poles are not used, that
the ratepayer would bear the cost of that?

1143
MR. WIEBE: I'm not clear on the way -- the uniform system of
accounts and all that works. But if it's
similar to Manitoba, that would be the case.

1144
MR. DINGWALL: Okay. Now, as the record in this process is
contemplating what happens in our
jurisdictions, your experience in Manitoba is somewhat interesting.
You
mentioned earlier that Manitoba has a -- or that you've got a
process under which
you look at an amortization period for the efforts that you
undertake to make a
pole ready for joint use. What's that amortization period?

1145
MR. WIEBE: It's 25 years.

1146
MR. DINGWALL: And is that the same amortization period that you use
for the life of the pole?

1147
MR. WIEBE: No, it isn't.

1148
MR. DINGWALL: What's your amortization period for the life of the
pole?

1149
MR. WIEBE: Currently, I believe it's around 33 years.

1150
MR. DINGWALL: And do you find that that amortization period
reflects the useful life of the poles
in your system?

1151
MR. WIEBE: The amortization period is not considered to be
equated or even compared to the life of a
pole, because we believe that the amortization period is just the
time over which we are
willing to finance the cost of the extra strength and the extra
height.

1152
MR. DINGWALL: Okay. Does Manitoba Hydro follow a regulated form of
accounting?

1153
MR. WIEBE: That's a question I don't have an answer to. I don't
believe so, but I don't have the
definitive answer to that.

1154

MR. DINGWALL: Does Manitoba Hydro track the value or the asset value of its power poles?

1155
MR. WIEBE: Manitoba Hydro tracks the asset value of its power poles but doesn't differentiate between joint-use and all other poles.

1156
MR. DINGWALL: So if I were to ask you what Manitoba Hydro's net-embedded cost of its power poles would be, would you be in a position to answer that?

1157
MR. WIEBE: I would have to get some information, but I have that number available to me, yes.

1158
MR. DINGWALL: I wonder if I could ask for that by way of undertaking.

1159
MR. KAISER: Mr. Dingwall, why do we care what the embedded costs of poles are in Manitoba?

1160
MR. DINGWALL: Well, because we're looking at information in Ontario that's based on 1995.

1161
MR. KAISER: I understand.

1162
MR. DINGWALL: And we're also taking a look at what the cost might be in other jurisdictions. If we've got a current number from another utility which might be comparable, it might give some information to this Board as to whether or not the figures that are being put forward to it, with a view to setting a licence condition rate, are appropriate.

1163
MR. KAISER: Well, let's suppose the embedded costs are different. What does that tell us? The embedded costs are going to be different between Manitoba and Ontario, no doubt. I just don't see the relevance of it. Am I missing something?

1164
MR. DINGWALL: If I may, I'll withdraw the request. Those are my questions.

1165
MR. KAISER: Any other questions for this witness?

1166
MR. RUBY: No, sir. I just would point out, I did make the point of saying to Mr. Wiebe that the answer -- that he was not here to talk about the detailed numbers for other provinces. And Mr. Engelhart took you to tab B of the answers to interrogatories,

that long chart,
and showed you the first page. I would just mention to the Board that the
detailed figures
are underneath it, and many pages for each of the 18 utilities, for which
the CEA has
provided information.

MR. KAISER: Thank you. 1167

MR. RUBY: Thank you, Mr. Chair. 1168

MR. KAISER: Do you have anything, Mr. Lyle? 1169

CROSS-EXAMINATION BY MR. LYLE: 1170

MR. LYLE: Just a couple of questions, Mr. Chair. And Mr. Wiebe, I'm not
sure if you have it with
you, but I'm going direct you to Mr. Ford's evidence. 1171

MR. WIEBE: Yes. 1172

MR. LYLE: And specifically at the end of his evidence, his pole diagram. 1173

MR. WIEBE: Yes. 1174

MR. LYLE: And correct me if I am wrong, but I recollect from your
testimony that you indicated that
you agreed that the average joint-use pole in Canada was around 40 feet. 1175

MR. WIEBE: If you averaged all the poles, it was around 40 feet. 1176

MR. LYLE: Okay. Looking at this diagram, do you have any concern -- and
assuming now a 40-foot
pole for our purposes, do you have any concern with the amount of space
allocated to
buried space? 1177

MR. WIEBE: I would not use this model. 1178

MR. LYLE: No, I understand you wouldn't use this model. 1179

MR. WIEBE: Okay. 1180

MR. LYLE: If we got a 40-foot joint-use pole -- 1181

MR. WIEBE: I would not use these numbers for a 40-foot joint-use
pole. 1182

1183
MR. LYLE: Okay. Tell me what numbers you would use for buried space for a
40-foot joint-use pole?

1184
MR. WIEBE: I would determine what the actual communications
requirement for an average joint-use pole is on Ontario, and I would include the communications sagging
space.

1185
MR. LYLE: I'm focussing now just on the buried space.

1186
MR. WIEBE: I know. I don't have new numbers to give you. If
that's what you're asking from me for Ontario, I don't have new numbers to give you.

1187
MR. LYLE: I'm asking you, do you have any concern about putting 6 feet
towards buried space?

1188
MR. WIEBE: No, I don't.

1189
MR. LYLE: Okay. Now, coming, then, to the clearance number of 17.25 feet,
can you explain to me whether you think that's an appropriate number?

1190
MR. WIEBE: I think it's an inappropriate number, because in
actual fact, the communications requirements are greater than 2 feet, and they use clearance -- what
is considered here to be clearance, and also more of the pole further up, to accommodate
their connect -- their attachments. So I would say the clearance space is much too large.

1191
MR. LYLE: Clearance space is much too large.

1192
MR. WIEBE: And communications space, 2 feet is too small.

1193
MR. LYLE: Okay. Can I turn you to your evidence, tab 3, schedule 3. Do
you have that?

1194
MR. WIEBE: I don't have that one. Tab -- schedule 3?

1195
MR. LYLE: I believe it's your report.

1196
MR. WIEBE: Is it...

1197
MR. LYLE: No, it's...

1198
MR. WIEBE: Okay. I have an excerpt of my report that I only took
with me from Winnipeg. I'm sorry, I
don't have the whole report with me.

1199
MR. LYLE: Do you have page 6?

1200
MR. WIEBE: Of schedule?

1201
MR. LYLE: Of your report, the schedule 3?

1202
MR. WIEBE: No, I don't.

1203
MR. LYLE: Okay, well, let me read it for you. You say --

1204
MS. FRIEDMAN: We'll give it to him.

1205
MR. LYLE: Okay.

1206
MR. WIEBE: Okay.

1207
MR. LYLE: And the fourth line down, it states:

1208
"The most common amount of pole space allocated to support communications wires and
equipment is
600 millimetres."

1209
And that's about 2 feet; right?

1210
MR. WIEBE: Yes.

1211
MR. LYLE: Okay. So can you explain for me why here it's appropriate, it's
the most common form,
and then what you're telling me later, that it's not sufficient
communication space?

1212
MR. WIEBE: It's the space that is most commonly allocated on the
pole for communications companies
to attach to. It's not the space they actually require in totality
for the pole to support its
conductors.

1213
MR. LYLE: Okay. So tell me, then, can you give me a number, then, that
does deal with the totality
of the space that's necessary for the communications users?

1214
MR. WIEBE: It's based on the sag of the conductors. And I don't
Page 111

-- like, as I said before, the sag varies
between 400 millimetres and 1,400 millimetres, and I can't give you
one.

MR. LYLE: You can't give me a typical then? 1215

MR. WIEBE: No. 1216

MR. LYLE: Okay. Thank you, I think those are all my questions, Mr. Chair. 1217

QUESTIONS FROM THE BOARD: 1218

MS. CHAPLIN: Thank you. I just want to follow on to make sure I
understand, from some of the information you were giving Mr. Lyle. So again, I'm looking at this
diagram of a typical pole. 1219

MR. WIEBE: Right. 1220

MS. CHAPLIN: Now, am I correct that it's your view that, in that
space that's currently identified as a communications space, that there could be an attachment at the
bottom of that space? 1221

MR. WIEBE: That's likely. 1222

MS. CHAPLIN: Okay. But am I correct in your understanding as the
reason the clearance space is 17.25 -- in other words, if the communications were not there, that
clearance space would not need to be as large? Is that what you are
explaining? 1223

MR. WIEBE: The clearance space required for communications and
for electric utilities is exactly the same, except for when we cross walkways and driveways, where the
communications space may be a little bit less. But otherwise we have the same
minimum ground clearance requirements in CSA. 1224

MS. CHAPLIN: Okay, so am I correct in understanding your view is
that when you have a joint-use pole, its total height is higher than it would otherwise
need to be? 1225

MR. WIEBE: Almost always. 1226

1227

MS. CHAPLIN: Okay. And likewise, I believe you've also explained that you believe this power space at the top, you believe, is more accurately less than the 11.5 that's here?

1228

MR. WIEBE: That's my experience.

1229

MS. CHAPLIN: Okay. And am I also correct that this separation space is, in your view, attributable to communication, because it has to account for the electricity line sag? Is that --

1230

MR. WIEBE: No, the separation space is specifically for communications -- for the protection of communications workers. That's the way CSA put it in, was to get the communication workers safe from electric utility equipment.

1231

MS. CHAPLIN: Okay. So, then, perhaps you could -- on your diagram, you indicated that the sag from the electricity lines at the top of the pole had to maintain a certain clearance from that separation space.

1232

MR. WIEBE: Horizontal line, yes it did.

1233

MS. CHAPLIN: Okay. Okay. Thank you.

1234

MR. SOMMERVILLE: I have no questions.

1235

MR. WIEBE: I have to admit, it's a complicated matter for what everybody would hope to be a simple matter. But each joint-use pole is an engineered pole.

1236

MR. KAISER: Mr. Wiebe, just one question, and it goes back to the stranded assets. It sounds like you buy two classes of poles, a joint-use pole which you've now told us is usually higher, and I'll call it an ordinary pole; is that right?

1237

MR. WIEBE: We buy many classes but we always have stronger, higher poles for joint use, yes.

1238

MR. KAISER: Just as a matter of interest, what percentage of the poles that you would buy in any given year would be joint-use poles?

1239

MR. WIEBE: Maybe I didn't make myself clear. What we buy is a whole range of height and class, and we use them for ourselves as well. So we will just -- it's just that

one isn't the joint-use as
joint-use pole to a non-joint-use pole. It's just that in a given circumstance, the
joint-use pole is always
higher and stronger, so we will take the next one over.

1240
So we don't buy joint-use poles. We buy higher and stronger poles for various
reasons, for many reasons,
and we have them in our inventory, but we would be required to be using a higher
and stronger pole
every time we do joint use.

1241
MR. KAISER: So when you told us about the stranded assets, you
buy the higher, stronger poles
because the cable companies or somebody else may come around and
want an
attachment and need it for that purpose. You have them in your
inventory. But you also
need them for other purposes?

1242
MR. WIEBE: We also need them for other purposes. We obviously
wouldn't have to buy as many if we
didn't have joint use.

1243
MR. KAISER: And you raised a spectre that you bought these poles,
which we now understand could be
used for joint use but also other purposes where you require a
stronger pole, but it may
be that you don't use them all up, so you have some concept you have
an extra cost. You
bought the stronger pole and maybe you don't have a customer that
wants to attach.

1244
MR. WIEBE: So you've installed a higher and stronger pole, is
that what you're saying?

1245
MR. KAISER: You raised the concept of stranded asset, which I
understood you had bought a more
expensive pole or a stronger pole --

1246
MR. WIEBE: And installed it.

1247
MR. KAISER: And installed it, and a customer didn't materialize;
right?

1248
MR. WIEBE: In Manitoba Hydro, that isn't the case, but
nationally, that can be the case.

1249
MR. KAISER: All right, so it's not the case in Manitoba?

1250
MR. WIEBE: Manitoba Hydro doesn't install extra-height,
extra-strength poles unless there is a
customer.

1251
MR. KAISER: okay. All right, so you don't have a stranded asset
issue.

1252
MR. WIEBE: No.

1253
MR. KAISER: Okay. I misunderstood, thank you.

1254
MR. WIEBE: But you can have a stranded asset issue like you
described.

1255
MR. KAISER: Well, do you know?

1256
MR. WIEBE: Yes, I do not know nationally that exists, yes.

1257
MR. KAISER: All right. Did you have anything further?
1258
Thank you, sir. Thank you, I hope you catch your plane.

1259
MR. WIEBE: Thank you.

1260
MR. SOMMERVILLE: Good luck.

1261
□
PROCEDURAL MATTERS:

1262
MR. RUBY: Mr. Chair, if I can just, one housekeeping matter. I notice Mr.
Wiebe drew something.
Obviously it's up to the Panel whether it should be marked as the next
exhibit or not, and
kept for the Panel's use.

1263
MR. LYLE: The only issue from me would be storage, Mr. Chair.

1264
MR. KAISER: I'm sure with all the technology we have we can
reduce it down.

1265
MR. LYLE: Certainly. We'll mark it as Exhibit E.2.2. And sir, I was
actually remiss. I should have
marked the excerpt from the Rate Handbook as an exhibit, so I'll mark
that as Exhibit
E.2.3.

1266
EXHIBIT NO. E.2.2 DRAWING MADE BY MR. ERNST WIEBE

1267

1268
MR. LYLE: I Do have one minor matter with respect to the transcript, Mr.
Chair. And it's a reference
in line 1752, and you're quoted as saying that: "We could hear the
Allstream witness on
the 18th," and I know I heard the 8th. And I don't know if that was your
intention.

1269
MR. KAISER: Yes, you're correct.

1270
MR. LYLE: And just then, sir, with respect to the schedule for tomorrow.

1271
MR. KAISER: Tomorrow we'll be starting at 11:00 I believe it is?

1272
MR. LYLE: That's correct. And I believe it's Mr. Mitchell, Dr. Mitchell
who will be here.

1273
MS. FRIEDMAN: Mr. Lyle, I've discussed this with Mr. Brett. We're
going to have the LDC panel
first because they will be much briefer because cross-examination
isn't occurring
until November 10th. So the LDC panel will be giving their
evidence-in-chief,
and then Mr. Mitchell will be up. Dr. Mitchell, sorry.

1274
MR. KAISER: Is that acceptable, Mr. Brett?

1275
MR. BRETT: Yes, I think that's what we understood was going to
be the case. Just a moment, please.
That's fine, sir. Thank you.

1276
MR. KAISER: Thank you. We'll adjourn until 11:00 tomorrow
morning.

1277
--- Whereupon the hearing adjourned at 4:59 p.m.